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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Barbara Allen, Richard Dippold,  
Melvin Jones, Donald McCarty,  
Richard Scates and Walter G. West,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

vs.

Honeywell Retirement Earnings Plan,  
Honeywell Secured Benefit Plan,  
Plan Administrator of Honeywell  
Retirement Earnings Plan, and Plan  
Administrator of Honeywell Secured  
Benefit Plan,

Defendants.

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No. CV04-0424 PHX ROS

**DEFENDANTS' RESPONSE TO  
PLAINTIFFS' SEPARATE  
STATEMENT OF FACTS**

**- AND -**

**DEFENDANTS' STATEMENT OF  
ADDITIONAL FACTS PRECLUDING  
JUDGMENT FOR PLAINTIFFS**

Pursuant to LRCiv 56.1(b), Defendants set forth the following Response to Plaintiffs' Separate Statement of Facts in Support of Plaintiffs' Motion for Summary Judgment. *See* Doc. 679, 681, 683.

This Response is divided into three sections: 1) Defendants' responses to each of Plaintiffs' statement of facts ("PSOF"); (2) Defendants' statement of additional facts precluding judgment for Plaintiffs ("DSAF"); and (3) Defendants' arguments supporting their requests to strike certain portions of Plaintiffs' submissions pursuant to LRCiv. 7.2(m)(2).

### **I. Defendants' Responses To PSOF ("DR-PSOF")**

**PSOF 1 RESPONSE:** Paragraph 1 is disputed in part. That the Garrett Corporation Severance Plan was restated effective January 1, 1976 is undisputed. That as of December 31, 1983 the Garrett Severance Plan was "intended to be a defined contribution plan" is disputed insofar as the Internal Revenue Service determined that the Garrett Severance Plan *was* a defined contribution plan, (*see, e.g.*, DSOF ¶ 3),<sup>1</sup> which Mr. Covert's deposition testimony, as cited by Plaintiffs, confirms.

**PSOF 2 RESPONSE:** Contrary to LRCiv 56.1(a), Plaintiffs assert multiple facts that purport to be material within paragraph 2. Defendants respond to each purported "material fact" in turn.

Plaintiffs' assertions regarding Company contributions to the Garrett Severance Plan are disputed in part. That the "Company," (*see* Doc. 16, Ex. B, attached hereto at Tab 69 ("Garrett Severance Plan"), at § 1.3 at HW0000226)<sup>2</sup> would contribute to the Garrett Severance Plan "as of each Benefit Accrual Date [June 30 and December 31 of each calendar year] beginning with June 30, 1960, an amount equal to the sum of the

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<sup>1</sup> Citations to "DSOF" are citations to the numbered paragraph of Defendants' Statement Of Facts In Support Of Defendants' Motion For Summary Judgment On All Remaining Claims. *See* Doc. 677.

<sup>2</sup> Pursuant to LRCiv 7.1(d), Defendants are not filing copies of documents that have previously been filed with the Court; however, Defendants will provide hard copies of those materials in the courtesy copies they are submitting to the Court and to Plaintiffs' counsel.

1 required Company contributions with respect to Participants included in the Plan on such  
2 Benefit Accrual Date” is undisputed. (*Id.* at HW0000225; § 3.2 at HW0000243.) The  
3 Garrett Severance Plan provided that the amount of that contribution was to be “an  
4 amount equal to 2% of the Compensation received by the Participant during the six-  
5 month period ending on the Benefit Accrual Date.” (*Id.* at § 3.2 at HW0000242.)  
6 Interest on the “Account of each Participant included in the Plan on each Benefit Accrual  
7 Date” was set to equal “1.75% (or such other rate as may be determined by the  
8 Severance Plan Committee from time to time) of the lowest balance in such account  
9 during the six-month period ending on the Benefit Accrual Date on which the interest  
10 credit is made.” (*Id.* at § 4.3 at HW0000247.)

11 Defendants object and move to strike Plaintiffs’ assertions regarding the  
12 allocation of “income, gains and losses, or forfeitures” to Participants’ accounts. These  
13 assertions should be stricken pursuant to LRCiv 7.2(m) and 56.1(a), as they do not refer  
14 “to a specific admissible portion of the record where the fact finds support.”  
15 Furthermore, because the Two Remaining Claims are limited to and require proof that  
16 the amendment of the Signal Retirement Plan violated ERISA § 204(g) in one of two  
17 precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike  
18 paragraph 2 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth a “material fact”  
19 that is relevant to resolution of the Two Remaining Claims. Whether allocations were  
20 made to the Garrett Severance Plan prior to the merger of the Garrett-Signal Plans is  
21 irrelevant to the resolution of the Two Remaining Claims, and is therefore not an issue of  
22 material fact for consideration on summary judgment. (*See, e.g.*, Fed. R. Civ. P. 56,  
23 LRCiv 56, Fed. R. Evid. 402.) It is undisputed that, in early 1984, there was an  
24 allocation to participants in the Garrett Severance Plan, who were actively employed on  
25 December 31, 1983, of excess assets remaining in the Garrett Severance Plan as of  
26 December 31, 1983. (*See, e.g.*, May 22, 2010 Deposition Transcript of James McLeod,  
27  
28

1 attached hereto at Tab 93 (“McLeod Dep.”),<sup>3</sup> at 54:4-20; McLeod Dep. Ex. 11, attached  
 2 hereto at Tab 85, at HW0041307.)

3 **PSOF 3 RESPONSE:** Defendants object and move to strike paragraph 3  
 4 pursuant to LRCiv 7.2(m) and 56.1(a), as it does not refer “to a specific admissible  
 5 portion of the record where the fact finds support.” Furthermore, because the Two  
 6 Remaining Claims are limited to and require proof that the amendment of the Signal  
 7 Retirement Plan violated ERISA § 204(g) in one of two precisely defined ways, (*see*  
 8 DSAF ¶ 65), Defendants object and move to strike paragraph 3 pursuant to LRCiv  
 9 7.2(m) and 56.1(a) as failing to set forth a “material fact” that is relevant to resolution of  
 10 the Two Remaining Claims. The previous existence and timing of any excess allocation  
 11 is irrelevant to the resolution of the Two Remaining Claims, and is therefore not an issue  
 12 of material fact for consideration on summary judgment. *See, e.g.*, F.R.C.P. 56, LRCiv  
 13 56, F.R.E. 402.

14 To the extent the Court does not strike paragraph 3, it is disputed. The exhibit  
 15 Plaintiffs generally cite to is the January 1984 brochure distributed to former Garrett  
 16 employees which, in part, simply explains that excess assets were allocated to their new  
 17 SBA accounts, which in turn were invested at an interest rate over 12%:

18 On January 1, 1984, your Severance Plan Account Balance, which now  
 19 includes your share of the excess assets of the Severance Plan Trust, was  
 20 transferred to a new Garrett Secured Benefit Account in the Signal  
 Companies, Inc. Savings & Stock Purchase Plan. This action terminated  
 the Garrett Severance Plan.

21 This new account has a guaranteed annual interest rate in excess of 12%  
 22 for the next 25 years, insured by Prudential Insurance Company of  
 America. . . .

23 (May 26, 2010 Deposition Transcript of Craig Chapman, attached to PSOF at Exh. F  
 24 (“Chapman Dep., PSOF Exh. F”), at Exh. 7, at HW0004355.)

25 **PSOF 4 RESPONSE:** Paragraph 4 is disputed in part. That “Amendment IV  
 26 provided a ‘final benefit accrual date’ of December 31, 1983” is disputed. Amendment

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27  
 28 <sup>3</sup> Where deposition testimony is being cited solely to authenticate a subsequently-cited  
 exhibit, that testimony will only be referenced the first time the exhibit is cited.

IV provides that “[t]he December 31, 1983 Benefit Accrual Date shall be the last date on which Company contributions are credited to the Accounts of Participants under Section 4.2 of the Plan ....” (Doc. 16, Ex. D, attached hereto at Tab 70 (“Garrett Severance Plan, Amendment IV”), at HW0000307.) Paragraph 4 is also disputed to the extent that it fails to explain that the surplus assets remaining in the Severance Plan would be allocated “to participants in the Plan on December 31, 1983, and entitled to an allocation pursuant to Section 4.3 on December 31, 1983.” (*Id.* at HW0000307-308). Finally, the correct page citations to Doc. 16, Ex. D are HW0000307-308. (*Id.*)

**PSOF 5 RESPONSE:** Paragraph 5 is undisputed.

**PSOF 6 RESPONSE:** Paragraph 6 is undisputed.

**PSOF 7 RESPONSE:** Paragraph 7 is disputed in part. Plaintiffs have corrected some of the inaccuracies in the quotation they originally provided in paragraph 7, *see* Doc. 694, but some remain. For the sake of accuracy, the Garrett Plan § 4.1(b)(2) and (b)(3) provide (with the corrected language emphasized in italics):

(b) Objective Retirement Income. A Participant’s Objective Retirement Income shall be the greatest of his Career Average Benefits, Final Average Benefits, or Minimum Benefits, as those terms are defined immediately below:

\*\*\*

2) Final Average Benefits. A Participant’s Final Average Benefits shall be an annual income (payable in monthly installments of 1/12th of the total) equal to the Participants total Credited Service...*multiplied by the sum of:*

- i. 1% of the Participant’s Final Average Compensation *or* the average Social Security Maximum Amount for the five (5) consecutive complete calendar years immediately preceding the Participant’s year of retirement, or, if earlier, the five (5) consecutive calendar years immediately preceding the year in which the Participant attains age 65, whichever is less, and

ii. 1-1/2% of the excess of the Participant's Final Average Compensation over the average Social Security Maximum Amount for the five (5) consecutive calendar years immediately preceding the Participant's year of retirement, or, if earlier, the five (5) consecutive calendar years immediately preceding the year in which the Participant attains age 65.

\*\*\*

3) Minimum Benefits. ...With regard to Participants retiring, terminating employment, or deemed to have retired on or after December 1, 1981, a Participant's minimum benefits shall be an annual income (payable in monthly installments of 1/12th of the total) equal to \$234 multiplied by the Participant's Credited Service...

(Doc. 16, Ex. A, attached hereto at Tab 68 ("Garrett Retirement Plan"), at HW0000032-HW0000042)

**PSOF 8 RESPONSE:** Paragraph 8 is undisputed.

**PSOF 9 RESPONSE:** Paragraph 9 is disputed in part. That the Garrett Retirement Plan provides that "[a] Participant's Potential Retirement Income from the [Garrett] Severance Plan shall be calculated pursuant to the tables set forth in Exhibit B (and any necessary interpolations or extrapolations from these tables)" is undisputed. (Garrett Retirement Plan, attached hereto at Tab 68, at HW0000038-39.) That Exhibit B provided for "Annual Interest Factors at 3.53% (1.75% each 6 months)" is also undisputed. (*Id.* at HW0000147-148; *see also* DSOF ¶ 9.)

That "the offset" could be determined prior to the participant's date of termination is disputed. As Plaintiffs' experts have agreed, under the express terms of the Garrett Retirement Plan, a participant's SBA offset could not be calculated until the date of his termination:

A Participant's Potential Retirement Income from the [Garrett] Severance Plan . . . shall be equal to the annual retirement income *as of the Participant's Normal Retirement Date*, payable in the form of a single life

1 annuity payable in monthly installments which can be funded from the  
 2 sum which could have been transferred to the Plan, pursuant to Article 3.2,  
 3 from the Severance Plan *at the Participant's retirement date or earlier  
 date of termination of service, whichever is applicable[.]*"

4 (Garrett Retirement Plan, attached hereto at Tab 68, at HW0000038-39 (emphasis  
 5 added); *see also* DSOF ¶ 11.)

6 **PSOF 10 RESPONSE:** Contrary to LRCiv 56.1(a), Plaintiffs assert multiple  
 7 facts that purport to be material within this paragraph 10. Defendants respond to each  
 8 purported "material fact" in turn.

9 That "Credited Interest," under the Garrett Retirement Plan, was defined as  
 10 "interest computed at a rate of 3.5% per annum, compounded annually, or at such other  
 11 rate as may be determined by the Committee from time to time" is not disputed.

12 Defendants object and move to strike pursuant to LRCiv 7.2(m) and 56.1(a)  
 13 Plaintiffs' assertion that no other interest rate was ever determined by the Committee, as  
 14 they do not refer "to a specific admissible portion of the record where the fact finds  
 15 support." Furthermore, because the Two Remaining Claims are limited to and require  
 16 proof that the amendment of the Signal Retirement Plan violated ERISA § 204(g) in one  
 17 of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike  
 18 the unsupported assertion in paragraph 10 pursuant to LRCiv 7.2(m) and 56.1(a) as  
 19 failing to set forth a "material fact" that is relevant to resolution of the Two Remaining  
 20 Claims. (*See* Fed. R. Civ. P. 56; LRCiv 56; Fed. R. Evid. 402.)

21 **PSOF 11 RESPONSE:** Contrary to LRCiv 56.1(a), paragraph 11 contains  
 22 multiple "facts" which purport to be material, one of which is repeated in paragraph 12.  
 23 Despite this failure, paragraph 11 is undisputed except to the extent it fails to  
 24 acknowledge that the Garrett Retirement Plan also required the application of a  
 25 "conversion factor" to calculate a participant's "Potential Retirement Income." (*See*  
 26 DSOF ¶ 9.) Under the terms of Exhibit B, that factor was \$153.31, which was the same  
 27 conversion factor that applied under the Signal Retirement Plan. (*See id.*; *Allen v.*  
 28 *Honeywell Ret. Earnings Plan*, 382 F. Supp. 2d 1139, 1166 (D. Ariz. 2005).)



1           **PSOF 12 RESPONSE:** Paragraph 12 is undisputed.

2           **PSOF 13 RESPONSE:** Because the Two Remaining Claims are limited to and  
 3 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 4 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 5 move to strike paragraph 13 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 6 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 7 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Plaintiffs have settled and released any and all  
 8 claims relating to early retirement benefits under the Garrett, Signal, and/or successor  
 9 Plans. (*See* DSAF ¶¶ 59-70, 83-87; *see also* Defendants’ Motion To Enforce The Partial  
 10 Settlement Agreement (“PSA Motion”) at Section III.C.) Not only is an early retirement  
 11 benefits claim settled and released, but the Signal Retirement Plan provided for  
 12 unreduced early retirement benefits beginning at age 60—a benefits enhancement that  
 13 forecloses the possibility of a cutback in accrued benefits with respect to these benefits  
 14 terms. (*See* DSOF ¶ 65.)

15           Subject to and without waiving Defendants’ objection, to the extent the Court  
 16 does not strike paragraph 13, it is undisputed.

17           **PSOF 14 RESPONSE:** Because the Two Remaining Claims are limited to and  
 18 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 19 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 20 move to strike paragraph 14 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 21 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 22 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Plaintiffs have settled and released any and all  
 23 claims relating to early retirement benefits under the Garrett, Signal, and/or successor  
 24 Plans. (*See* DSAF ¶¶ 59-70, 83-87; *see also* PSA Motion at Section III.C.) Not only is  
 25 an early retirement benefits claim settled and released, but the Signal Retirement Plan’s  
 26 savings clause protected these early retirement benefits from being cut back. (*See* DSOF  
 27 ¶¶ 51-58; *see also* Defendants’ Opposition to Plaintiffs’ Motion For Summary Judgment,  
 28 Doc. 678 (“Opp. Brief”) at Section II.A.1(iv).) Mr. Denlinger applied the early



1 commencement factors in effect under the Garrett Retirement Plan as of 12/31/83 in  
 2 calculating participants' Garrett accrued benefit. (July 14, 2010 Deposition Transcript of  
 3 Kurt Denlinger, attached hereto at Tab 99 ("Jul. 14 2010 Denlinger Dep."), at 128:8-  
 4 131:23.) That protection and practice foreclose the possibility of a cutback in accrued  
 5 benefits with respect to these benefits terms.

6 Subject to and without waiving Defendants' objection, to the extent the Court  
 7 does not strike paragraph 14, it is undisputed.

8 **PSOF 15 RESPONSE:** In response to paragraph 15, Defendants incorporate by  
 9 reference their response to paragraph 14.

10 **PSOF 16 RESPONSE:** Because the Two Remaining Claims are limited to and  
 11 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 12 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 13 move to strike paragraph 16 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 14 a "material fact" that is relevant to resolution of the Two Remaining Claims. (*See also*  
 15 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Plaintiffs have settled and released any and all  
 16 claims relating to early retirement benefits under the Garrett, Signal, and/or successor  
 17 Plans. (*See* DSAF ¶¶ 59-70, 83-87; *see also* PSA Motion at Section III.C.) Not only is  
 18 any early retirement benefits claim settled and released, but the Signal Retirement Plan's  
 19 savings clause protected these early retirement benefits from being cut back. (*See* DSOF  
 20 ¶¶ 51-58; *see also* Opp. Brief at Section II.A.1(iv).) Mr. Denlinger applied the early  
 21 commencement factors in effect under the Garrett Retirement Plan as of 12/31/83 in  
 22 calculating participants' Garrett accrued benefit. (Jul. 14 2010 Denlinger Dep., attached  
 23 hereto at Tab 99, at 128:8-131:23.) That protection and practice foreclose the possibility  
 24 of a cutback in accrued benefits with respect to these benefits terms.

25 Defendants also object and move to strike pursuant to LRCiv 7.2(m) and 56.1(a)  
 26 paragraph 16 on the ground that Plaintiffs do not cite to a "specific admissible portion of  
 27 the record where the [purported] fact finds support." The lone "Second Supplement to  
 28 Declaration and Rebuttal Report of James E. Holland" Plaintiffs cite is inadmissible

1 because it (a) was improperly submitted long after expert discovery closed; (b) relies on  
 2 data that was available to Mr. Holland well before the extended July 23, 2010 deadline  
 3 for Plaintiffs' rebuttal expert reports; (c) does not contain rebuttal testimony; (d) offers  
 4 opinions on matters that are settled and barred; and (e) was submitted unsigned and  
 5 without the supporting calculations. (*See* DSAF ¶¶ 30-52; *see also* Opp. Br. at Section  
 6 II.C.)

7 Subject to and without waiving Defendants' objections, to the extent the Court  
 8 does not strike paragraph 16, Defendants incorporate herein by reference their response  
 9 to paragraph 14.

10 **PSOF 17 RESPONSE:** Paragraph 17 is disputed. The benefit formula under the  
 11 Garrett Retirement Plan provided for a monthly retirement annuity equal to one-twelfth  
 12 of: (a) 1.0% of Final Average Compensation up to the Social Security Integration Level,  
 13 plus (b) 1.5% of Final Average Compensation above the Social Security Integration  
 14 Level, times (c) years of Credited Service. (*See* DSOF ¶ 7.) By using different accrual  
 15 rates that were then applied to "final average compensation" below and above the  
 16 "Social Security Integration Level," the Garrett Retirement Plan reduced the gross  
 17 pension benefit it provided for to reflect Social Security income. (*See* DSOF ¶ 12.) In  
 18 this regard, the Garrett Retirement Plan's benefit formula was "identical" to the  
 19 minimum benefit formula provided for under the Signal Retirement Plan. (*See* DSOF ¶  
 20 33.) The Garrett Retirement Plan's integration with Social Security, expressed as a  
 21 "step-up," was also mathematically equivalent to the Social Security offset provided for  
 22 under the Signal Retirement Plan. (*See* DSOF ¶¶ 16-18, 29-30.)

23 **PSOF 18 RESPONSE:** Paragraph 18 is undisputed to the extent that Plaintiffs  
 24 have correctly presented Q&A 16.

25 Paragraph 18 is disputed to the extent it purports to represent that the Garrett  
 26 Retirement Plan's benefit formulas did not otherwise integrate with Social Security.  
 27 Defendants incorporate herein by reference their response to paragraph 17. In addition,  
 28 the "booklet" that Plaintiffs cite makes clear that it is "intended to provide [participants]

1 with a convenient summary of your Retirement Plan. Although it describes the more  
 2 important features of this plan, if there is any conflict between this wording and the  
 3 wording in the legal plan document, the legal plan document will govern.” (Doc. 679-2,  
 4 attached to PSOF at Exh. D (“PSOF Exh. D”), at 4.) The “booklet” Plaintiffs cite also  
 5 explains that “[h]ow much” a participant will get upon retirement “will depend upon  
 6 several variables,” including “[w]hat is the AVERAGE MONTHLY SOCIAL  
 7 SECURITY TAX BASE at the time of your termination[.]” (*Id.* at 7.) The “booklet”  
 8 goes on to provide a “Worksheet For Calculating MAXIMUM ACCRUED  
 9 RETIREMENT BENEFIT,” which includes as step 3 the subtraction of “AVERAGE  
 10 MONTHLY SOCIAL SECURITY TAX BASE (Divide total by 60 months)” from  
 11 “Average monthly wages (Divide total by 60 months).” (*Id.* at 18.)

12 **PSOF 19 RESPONSE:** Paragraph 19 is disputed in part. That the Garrett  
 13 Retirement Plan was amended to provide for its merger into the Signal Retirement Plan  
 14 by an amendment entitled “Amendment IX,” effective December 31, 1983, is  
 15 undisputed. (*See* DSOF ¶¶ 22-23.) Paragraph 19 is disputed to the extent that it  
 16 indicates that the effective date of the amended and restated Signal Retirement Plan was  
 17 December 31, 1983. The Signal Retirement Plan was amended and restated effective  
 18 January 1, 1984 to (a) admit former participants in the Garrett Retirement Plan who  
 19 continued in active employment as new participants in the Signal Retirement Pan and (b)  
 20 grant them past service credit for their years of participation in the Garrett Retirement  
 21 Plan. (*See* DSOF ¶¶ 25-26; *see also* Opp. Brief at Section II.A.1(i).)

22 **PSOF 20 RESPONSE:** Paragraph 20 is undisputed.

23 **PSOF 21 RESPONSE:** Because the Two Remaining Claims are limited to and  
 24 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 25 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 26 move to strike paragraph 21 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 27 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 28 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) The 1976 Signal Plan has never been at issue in

1 this case, and Plaintiffs have settled and released any claim relating to it. (*See* DSAF ¶¶  
2 59-70, 76-78; *see also* PSA Motion at Section III.A.) Furthermore, the 1976 Signal Plan  
3 has never previously been authenticated or subject to discovery, as evidenced by the fact  
4 it has been submitted on summary judgment through an affidavit from Plaintiffs’  
5 counsel. (*See* Doc. 686, Ex. T, Ex. 2.) The Signal Retirement Plan that admitted former  
6 participants of the Garrett Retirement Plan was the amended and restated Signal  
7 Retirement Plan, effective January 1, 1984. (*See* DSOF ¶¶ 22-23, 25-26; DR-PSOF ¶  
8 26; *see also* Opp. Brief at Sections II.A.1(i) and II.B.3.)

9       Subject to and without waiving Defendants’ objection, to the extent the Court  
10 does not strike paragraph 21, it is disputed in part. It is undisputed that the Social  
11 Security *offset formulas* in the “February 1985 Signal Plan,” which was effective  
12 January 1, 1984, and the May 1984 SPD are identical to the Social Security *offset*  
13 *formula* in the 1976 Signal Plan. Paragraph 21 is disputed to the extent that the *benefit*  
14 *formulas* in the “February 1985 Signal Plan,” effective January 1, 1984 and the May  
15 1984 SPD were *not* identical to the *Social Security benefit formula* in the 1976 Signal  
16 Plan. Both the Signal Retirement Plan effective January 1, 1984 and the May 1984 SPD  
17 provided for the same 1% minimum benefit formula (1% of final average compensation  
18 times years of credited service). (*See* DSOF ¶ 31; Hon. Ex. 218, attached to DSOF at  
19 Tab 43, at 905-Bielert00173.)

20       Plaintiffs’ expert has conceded that said 1% minimum benefit formula was  
21 “identical” to the maximum Social Security deduction formula used in the Garrett  
22 Retirement Plan. (*See* DSOF ¶ 33.) The 1% minimum benefit formula ensured that  
23 lower-paid employees would receive the same 1% of compensation without any  
24 reduction for Social Security as they had received under the Garrett Retirement Plan.  
25 (*See* DSOF ¶ 32.) The Signal Retirement Plan’s Social Security offset formula yielded a  
26 smaller reduction for Social Security for higher-paid employees. (*See* DSOF ¶¶ 34-35.)  
27 Furthermore, the Social Security formula contained in the “February 1985 Signal Plan,”  
28 effective January 1, 1984 was also subject to the SBA offset. (*See* DSOF ¶¶ 36-37.)

1 The 1976 Signal Plan's minimum benefit formula, on the other hand, was \$5.00  
 2 times the participant's years of credited service not in excess of 10 years. (Sept. 21,  
 3 2010 Declaration of Jennifer Kroll, attached to PSOF at Exh. T ("Sept. 2010 Kroll Decl.,  
 4 PSOF Exh. T"), at Exh. 2 at HW0025328.)

5 **PSOF 22 RESPONSE:** Because the Two Remaining Claims are limited to and  
 6 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 7 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 8 move to strike paragraph 22 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 9 a "material fact" that is relevant to resolution of the Two Remaining Claims. (*See also*  
 10 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) The 1976 Signal Plan has never been at issue in  
 11 this case, and Plaintiffs have settled and released any claim relating to it. (*See* DSAF ¶¶  
 12 59-70, 76-78; *see also* PSA Motion at Section III.A.) Furthermore, the 1976 Signal Plan  
 13 has never previously been authenticated or subject to discovery, as evidenced by the fact  
 14 it has been submitted on summary judgment through an affidavit from Plaintiffs'  
 15 counsel. (*See* Doc. 686, Ex. T, Ex. 2.) The Signal Retirement Plan that admitted former  
 16 participants of the Garrett Retirement Plan was the amended and restated Signal  
 17 Retirement Plan, effective January 1, 1984. (*See* DSOF ¶¶ 22-23, 25-26, DR-PSOF ¶  
 18 26; *see also* Opp. Brief at Sections II.A.1(i) and II.B.3.)

19 Subject to and without waiving Defendants' objection, to the extent the Court  
 20 does not strike paragraph 22, it is disputed in part. The 1976 Signal Plan's minimum  
 21 benefit formula was \$5.00 times the participant's credited service not in excess of 10  
 22 years. (Sept. 2010 Kroll Decl., PSOF Exh. T, at Exh. 2 at HW0025328.) The 1976  
 23 Signal Plan's minimum benefit formula was also amended from time to time. (*See, e.g.,*  
 24 Hon. Ex. 606, attached to DSOF at Tab 19 ("Signal Retirement Plan"), at HW0000315.)  
 25 It is undisputed that paragraph 22 compares the minimum benefits formula of the 1976  
 26 Signal Plan against the Garrett Plan formula set forth in paragraph 7 of Plaintiffs'  
 27 Separate Statement of Facts.  
 28

**PSOF 23 RESPONSE:** Because the Two Remaining Claims are limited to and require proof that the amendment of the Signal Retirement Plan violated ERISA § 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike paragraph 23 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also* Fed. R. Civ. P. 56; Fed. R. Evid. 402.) The 1976 Signal Plan has never been at issue in this case, and Plaintiffs have settled and released any claim relating to it. (*See* DSAF ¶¶ 59-70, 76-78; *see also* PSA Motion at Section III.A.) The 1976 Signal Plan has never previously been authenticated or subject to discovery, as evidenced by the fact it has been submitted on summary judgment through an affidavit from Plaintiffs’ counsel. (*See* Doc. 686 at Ex. T, Ex. 2.) The Signal Retirement Plan that admitted former participants of the Garrett Retirement Plan was the amended and restated Signal Retirement Plan, effective January 1, 1984. (*See* DSOF ¶¶ 22-23, 25-26, DR-PSOF ¶ 26; *see also* Opp. Brief at Sections II.A.1(i) and II.B.3.)

Subject to and without waiving Defendants’ objections, paragraph 23 is disputed. The evidence Plaintiffs cite directly contradicts the statement set forth in paragraph 23. (*See* July 2, 2010 Declaration of Lawrence Sher, attached to PSOF at Exh. N (“Sher Decl., PSOF Exh. N”), at ¶ 21 (“This newly-added 1% minimum formula had the (intentional) effect of limiting the Social Security offset in the Signal Plan to at most 0.5% of final average compensation per year of service—the same as the maximum offset used in the Garrett Plan[.]”).) Plaintiffs’ citation to Mr. Sher’s paragraph 21 is a concession, however, that the relevant Signal Retirement Plan at issue in this case is the amended and restated Signal Retirement Plan effective January 1, 1984, as that is the Signal Retirement Plan on which Mr. Sher’s expert opinion is based. (*See, e.g.*, July 2, 2010 Declaration of Lawrence Sher, attached to DSOF at Tab 1 (“Sher Decl.”), at ¶ 19.) Moreover, Plaintiffs’ expert has conceded that lower-paid employees under the Signal Retirement Plan would receive the same 1% of compensation without a reduction for Social Security as they had received under the Garrett Retirement Plan, and that those



two formulas were “identical.” (*See* DSOF ¶¶ 32-33.) Finally, the architect of the amended and restated Signal Retirement Plan effective January 1, 1984 explained that the Signal Retirement Plan’s Social Security integration formula was designed to achieve the same result as the Garrett Retirement Plan’s Social Security integration provision. (*See* DSOF ¶ 30.)

**PSOF 24 RESPONSE:** Because the Two Remaining Claims are limited to and require proof that the amendment of the Signal Retirement Plan violated ERISA § 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike paragraph 24 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also* Fed. R. Civ. P. 56; Fed. R. Evid. 402.) The 1976 Signal Plan has never been at issue in this case, and Plaintiffs have settled and released any claim relating to it. (*See* DSAF ¶¶ 59-70, 76-78; *see also* PSA Motion at Section III.A.) The 1976 Signal Plan has never previously been authenticated or subject to discovery, as evidenced by the fact it has been submitted on summary judgment through an affidavit from Plaintiffs’ counsel. (*See* Doc. 686 at Ex. T, Ex. 2.) The Signal Retirement Plan that admitted former participants of the Garrett Retirement Plan was the amended and restated Signal Retirement Plan, effective January 1, 1984. (*See* DSOF ¶¶ 22-23, 25-26, DR-PSOF ¶ 26; *see also* Opp. Brief at Sections II.A.1(i) and II.B.3.)

Moreover, there is no evidence of record, and Plaintiffs have cited none, that indicates that the Garrett Corporation ever adopted the 1976 Signal Plan in the manner provided by Section 6.7: “Any Company or other corporation may, with the approval of the Administrator, adopt the Plan...effective as of the first day of any Plan Year by resolution of its own board of directors. Such corporation shall give written notice of such adoption to the Administrator and to the Trustee by its duly authorized officers.” (Sept. 2010 Kroll Decl., PSOF Exh. T, at Exh. 2, at § 6.7 at HW0025348.)

Subject to and without waiving Defendants’ objection, to the extent the Court does not strike paragraph 24, it is undisputed that Plaintiffs have correctly cited the



definition of “Company” or “Companies” set forth in the 1976 Signal Plan.

**PSOF 25 RESPONSE:** Defendants object and move to strike pursuant to LRCiv 7.2(m) and 56.1(a) paragraph 25 on numerous grounds:

- Because the Two Remaining Claims are limited to and require proof that the amendment of the Signal Retirement Plan violated ERISA § 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike paragraph 25 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See* Fed. R. Civ. P. 56; Fed. R. Evid. 402) The 1976 Signal Plan has never been at issue in this case, and Plaintiffs have settled and released any claim relating to it. (*See* DSAF ¶¶ 59-70, 76-78; *see also* PSA Motion at Section III.A.) The 1976 Signal Plan has never previously been authenticated or subject to discovery, as evidenced by the fact it has been submitted on summary judgment through an affidavit from Plaintiffs’ counsel. (*See* Doc. 686, Ex. T, Ex. 2.) The Signal Retirement Plan that admitted former participants of the Garrett Retirement Plan was the amended and restated Signal Retirement Plan, effective January 1, 1984. (*See* DSOF ¶¶ 22-23, 25-26, DR-PSOF ¶ 26; *see also* Opp. Brief at Sections II.A.1(i) and II.B.3.)
- Paragraph 25 further fails to set forth a “material fact” that is relevant to resolution of the Two Remaining Claims because Plaintiffs have settled and released any and all claims relating to early retirement benefits under the Garrett, Signal, and/or successor Plans. (*See* DSAF ¶¶ 59-70, 83-87; *see also* PSA Motion at Section III.C.); Fed. R. Civ. P. 56; Fed. R. Evid. 402.)
- Paragraph 25 should be stricken for the additional reason that it fails to cite to a “specific admissible portion of the record where the [purported] fact finds support.” The lone “Second Supplement to Declaration and Rebuttal Report of James E. Holland” Plaintiffs cite is inadmissible because it (a) was improperly submitted long after expert discovery closed; (b) relies on data that was available to Mr. Holland well before the extended July 23, 2010 deadline for Plaintiffs’ rebuttal expert reports; (c) does not contain rebuttal testimony; (d) offers opinions on matters that are settled and barred; and (e) was submitted unsigned and without the supporting calculations. (*See* DSAF ¶¶ 30-52; *see also* Opp. Br. at Section II.C.)

Subject to and without waiving Defendants’ objections, to the extent the Court does not strike paragraph 25, it is disputed in part. Paragraph 5 of Mr. Holland’s purported Second Supplemental Declaration compares the “early retirement reduction factors for participants who terminate employment before age 55” under the “February 1985 Signal Plan” against the “Garrett Plan.” But the Signal Retirement Plan’s savings clause protected these early retirement benefits from being cut back. (*See* DSOF ¶¶ 51-58; *see also* Opp. Brief at Section II.A.1(iv).) And for early retirees who retired between ages 60-65, the Signal Retirement Plan effective January 1, 1984 provided more

1 generous early retirement factors. (*See* DSOF ¶ 65.) Mr. Denlinger also applied the  
2 early commencement factors in effect under the Garrett Retirement Plan as of 12/31/83  
3 in calculating participants' Garrett accrued benefit. (Jul. 14 2010 Denlinger Dep.,  
4 attached hereto at Tab 99, at 128:8-131:23.) That protection, benefit enhancement, and  
5 practice foreclose the possibility of a cutback in accrued benefits with respect to these  
6 benefits terms.

7 **PSOF 26 RESPONSE:** Because the Two Remaining Claims are limited to and  
8 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
9 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
10 move to strike paragraph 26 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
11 a "material fact" that is relevant to resolution of the Two Remaining Claims. (*See also*  
12 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) The 1976 Signal Plan (*i.e.*, "the existing Signal  
13 Plan" as of December 5, 1983 that Plaintiffs appear to be referring to in paragraph 26)  
14 has never been at issue in this case, and Plaintiffs have settled and released any claim  
15 relating to it. (*See* DSAF ¶¶ 59-70, 76-78; *see also* PSA Motion at Section III.A.) The  
16 1976 Signal Plan has never previously been authenticated or subject to discovery, as  
17 evidenced by the fact it has been submitted on summary judgment through an affidavit  
18 from Plaintiffs' counsel. (*See* Doc. 686, Ex. T, Ex. 2.) The Signal Retirement Plan that  
19 admitted former participants of the Garrett Retirement Plan was the amended and  
20 restated Signal Retirement Plan, effective January 1, 1984. (*See* DSOF ¶¶ 22-23, 25-26;  
21 *see also* Opp. Brief at Sections II.A.1(i) and II.B.3.)

22 Subject to and without waiving Defendants' objection, to the extent the Court  
23 does not strike paragraph 26, it is undisputed that the Board of Directors of the Signal  
24 Companies, Inc. held a meeting on December 5, 1983. It is also undisputed that at this  
25 meeting the Signal Board "resolved" to approve the merger of over twenty benefit plans  
26 into The Signal Companies, Inc. Retirement Plan effective January 1, 1984. (Sept. 2010  
27 Kroll Decl., PSOF Exh. T, at Exh. 5 at HW0024882.) That the Board "amended the  
28 definition of 'Company' in the existing Signal Plan to include the Plan Sponsors of the

merging plans effective 1/1/84” is disputed. The Signal Board “[r]esolved” to “*approve*” the inclusion of the sponsors of the merging plans, such as Garrett, “within the definition of the term ‘Company’ in Section 1.12 of the Signal Plan.” (*Id.* (emphasis added.)) The Board’s resolutions were not amendments. Instead, the Signal Board instructed the officers of the Corporation to amend the 1976 Signal Plan. Specifically, the Board provided the following:

RESOLVED, that the officers of the Corporation [are] authorized to execute such amendments to or restatements of the Signal Plan to facilitate the mergers described in the foregoing resolutions, including amendments to the Signal Plan deemed appropriate to convert it into a company-wide plan covering the participants now covered by the plans being merged[.]

(*Id.*) The Signal Plan was amended and restated by the officers of the Corporation effective January 1, 1984. (*See* DSOF ¶¶ 25-26.) Due to the passage of time, to the best of Defendants’ knowledge, the amended and restated Signal Retirement Plan was formally executed on February 4, 1985. (*See, e.g.*, DR-PSOF ¶¶ 36, 37; DSAF ¶ 27.)

It is also disputed that Defendants never produced a list of the merging plans. Defendants produced a list of the plans that merged into the Signal Plan. (April 28, 2010 Deposition Transcript of William Coffey (“Apr. 28 2010 Coffey Dep.”), attached hereto at Tab 88, at 48:5-16; Hon. Ex. 607, attached hereto at Tab 82, at HW0057023.)

**PSOF 27 RESPONSE:** Because the Two Remaining Claims are limited to and require proof that the amendment of the Signal Retirement Plan violated ERISA § 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike paragraph 27 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also* Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Any claims relating to whether the May 1984 SPD was the plan document after the merger were settled and released. (*See* DSAF ¶¶ 59-70, 88-97; *see also* PSA Motion at Section III.D.)

Subject to and without waiving Defendants’ objections, to the extent the Court does not strike paragraph 27, paragraph 27 is disputed. The May 1984 SPD was not a

governing plan document. The May 1984 SPD itself made that clear. (Doc. 16, Ex. H, attached hereto at Tab 73 (“May 1984 SPD”), at HW0000431 (“This material is intended to provide you with a convenient summary of your Retirement Plan by describing the more important features of the Plan. If there is any conflict between this wording and the wording in the legal Plan Document, the legal Plan Document will govern.”).) Also, the Signal Plan document could be amended only by the Board of Directors. (See Doc. 16, Ex. E, attached hereto at Tab 71 (“Signal Retirement Plan”), at § 8.6 at HW0000373-374 (providing that, other than an exception not applicable here, the Signal Retirement Plan could only be “amended or otherwise modified . . . by the Board of Directors[.]”); Sept. 2010 Kroll Decl., PSOF Exh. T, Exh. 2, at § 6.6 at HW0025348 (“...the Plan may be wholly or partially amended or otherwise modified, including retroactive amendments to meet governmental requirements, from time to time by the Board of Directors.”).) The May 1984 SPD was not a plan amendment by the Board of Directors.

The amended and restated Signal Retirement Plan, effective January 1, 1984, admitted former Garrett Retirement Plan participants who continued in active service. (See DSOF ¶¶ 25-26.) Even though the formal plan document was not executed until February 1985, the core plan features were known by December 1983 at the latest, and were communicated to plan administrators beginning at the time. (DSAF ¶¶ 10-15.) For example, by January 1984 at the latest, the SBA Offset had already been communicated to plan administrators, and was specifically explained as using a split 3.5%/7.5% projection forward interest rate under the terms of the Signal Retirement Plan effective January 1, 1984. (See DSAF ¶ 13.) Furthermore, the plan administrators were using a memo prepared by the plan’s actuary, Mr. Coffey, in January 1984 as a “uniform” tool when “calculating benefits,” including the SBA Offset. (DSAF ¶ 14.) The plan was administered consistent with those terms from January 1, 1984 through the February 5, 1985 execution date. (See DSAF ¶¶ 16-26.)

**PSOF 28 RESPONSE:** Because the Two Remaining Claims are limited to and require proof that the amendment of the Signal Retirement Plan violated ERISA §

204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike paragraph 28 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth a “material fact” that is relevant to resolution of the Two Remaining Claims. Whether it was distributed in May or August of 1984 is not material to resolution of the Two Remaining Claims. (*See also* Fed. R. Civ. P. 56; Fed. R. Evid. 402.) To the extent Plaintiffs are using this paragraph to establish that the May 1984 was the plan document, any claims relating to whether the May 1984 SPD was the plan document after the merger were settled and released. (*See* DSAF ¶¶ 59-70, 88-97; *see also* PSA Motion at Section III.D.)

Subject to and without waiving Defendants’ objections, to the extent the Court does not strike paragraph 28, paragraph 28 is undisputed to the extent that the May 1984 SPD was distributed to employees in 1984. (*See* DSOF ¶ 115.)

**PSOF 29 RESPONSE:** Because the Two Remaining Claims are limited to and require proof that the amendment of the Signal Retirement Plan violated ERISA § 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike paragraph 29 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also* Fed. R. Civ. P. 56; Fed. R. Evid. 402) To the extent Plaintiffs are using this paragraph to establish that the May 1984 was the plan document, any claims relating to whether the May 1984 SPD was the plan document after the merger were settled and released. (*See* DSAF ¶¶ 59-70, 88-97; *see also* PSA Motion at Section III.D.)

Subject to and without waiving Defendants’ objections, to the extent the Court does not strike paragraph 29, paragraph 29 is undisputed to the extent that Plaintiffs have provided part of the relevant sentence. The full relevant citation is: “Q. When do I become eligible to participate in the [Signal Companies, Inc.] Retirement Plan? A. If you were a participant in the Garrett Retirement Plan on December 31, 1983, you automatically began participating in this Plan on January 1, 1984.” (May 1984 SPD, attached hereto at Tab 73, at HW000431.) “This Plan” refers to The Signal Companies,

1 Inc. Retirement Plan (“Retirement Plan”) as amended and restated effective January 1,  
2 1984. (*Id.*)

3 **PSOF 30 RESPONSE:** Because the Two Remaining Claims are limited to and  
4 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
5 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
6 move to strike paragraph 30 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
7 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
8 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) To the extent Plaintiffs are using this paragraph  
9 to establish that the May 1984 was the plan document, any claims relating to whether the  
10 May 1984 SPD was the plan document after the merger were settled and released. (*See*  
11 DSAF ¶¶ 59-70, 88-97; *see also* PSA Motion at Section III.D.)

12 Subject to and without waiving Defendants’ objections, to the extent the Court  
13 does not strike paragraph 30, contrary to LRCiv 56.1(a), Plaintiffs assert multiple facts  
14 that purport to be material within paragraph 30. Defendants respond to each purported  
15 “material fact” in turn.

16 That Plaintiffs correctly quote the fourteenth question and answer from the May  
17 1984 SPD is not disputed.

18 That the flat dollar minimum formula was increased from \$19.50 per year of  
19 credited service under the Garrett Retirement Plan to \$20.00 per year of credited service  
20 under the Signal Retirement Plan is undisputed.

21 That the May 1984 SPD “added back in” the Garrett Plan’s minimum benefit  
22 formula is disputed. A 1% minimum benefit formula was added to the Signal  
23 Retirement Plan effective January 1, 1984 to achieve the same result as the Garrett  
24 Retirement Plan’s Social Security integration formula. (*See* DSOFF ¶¶ 30-31.) The May  
25 1984 SPD simply summarized that feature of the Signal Retirement Plan effective  
26 January 1, 1984. (*See* DR-PSOF ¶ 27.) The May 1984 SPD could not effect an  
27 amendment of either the Signal Retirement Plan effective January 1, 1984 or, as  
28 Plaintiffs’ now try to argue, the 1976 Signal Plan. (Signal Retirement Plan, attached



hereto at Tab 71, at § 8.6 at HW0000373-374 (providing that, other than an exception not applicable here, the Signal Retirement Plan could only be “amended or otherwise modified . . . by the Board of Directors[.]”); Sept. 2010 Kroll Decl., PSOF Exh. T, at Exh. 2, at § 6.6 at HW0025348 (“...the Plan may be wholly or partially amended or otherwise modified, including retroactive amendments to meet governmental requirements, from time to time by the Board of Directors.”); *see also* DSAF ¶¶ 28-29.)

**PSOF 31 RESPONSE:** Because the Two Remaining Claims are limited to and require proof that the amendment of the Signal Retirement Plan violated ERISA § 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike paragraph 31 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also* Fed. R. Civ. P. 56; Fed. R. Evid. 402.) To the extent Plaintiffs are using this paragraph to establish that the May 1984 was the plan document, any claims relating to whether the May 1984 SPD was the plan document after the merger were settled and released. (*See* DSAF ¶¶ 59-70, 88-97; *see also* PSA Motion at Section III.D.)

Subject to and without waiving Defendants’ objections, to the extent the Court does not strike paragraph 31, paragraph 31 is disputed to the extent Plaintiffs insinuate that the benefit enhancements were made effective through the May 1984 SPD. Those benefit enhancements were included in the Signal Retirement Plan effective January 1, 1984, which plan also included the Social Security and SBA Offsets that form the basis of Plaintiffs’ Two Remaining Claims. (*See* DSOF ¶¶ 25-26, 28-29, 42-45, and 59-72.) The benefit enhancements included more generous early retirement reduction factors for employees who were eligible to retire early under the Signal Retirement Plan, (*see* DSOF ¶¶ 65), a more generous definition of final average compensation, (*see* DSOF ¶ 66), a smaller Social Security reduction for higher-paid employees, (*see* DSOF ¶ 67), no reduction for Social Security for lower-paid employees, (*see* DSOF ¶ 68), for many participants, an additional month of credited service, (*see* DSOF ¶ 69), an increased flat dollar minimum, (*see* DSOF ¶ 70), and a new benefit formula effective in July 2000 that



1 in many cases enhanced benefits and in no case lowered them. (*See* DSOF ¶ 71.) The  
2 May 1984 SPD simply summarized those features of the Signal Retirement Plan  
3 effective January 1, 1984. (*See* DR-PSOF ¶ 27.)

4 Paragraph 31 is also disputed to the extent that, in addition to summarizing the  
5 Signal Retirement Plan's benefit enhancements effective January 1, 1984, the May 1984  
6 SPD also summarized the Social Security and SBA Offsets effective January 1, 1984  
7 under the Signal Retirement Plan. For example, the May 1984 SPD set forth the Signal  
8 Retirement Plan's benefit formulas, including the Social Security Offset formula and the  
9 alternative minimum benefit formula, and provided an example of how a "Normal  
10 Retirement Benefit" would be calculated using both formulas. (May 1984 SPD, attached  
11 hereto at Tab 73, at HW0000434-435.) At the end of the example, the May 1984 SPD  
12 specifically noted that if the Social Security Offset formula provided a higher monthly  
13 benefit, the participant "also would receive a social security check each month . . . for a  
14 total [monthly benefit] from the Retirement Plan and social security." (*Id.* at  
15 HW0000435.) The May 1984 also disclosed the SBA Offset by explaining that if a  
16 participant does not transfer his or her SBA to the Retirement Plan, the "NORMAL  
17 RETIREMENT benefit will be somewhat reduced." (*Id.*) The Court has already held  
18 that the May 1984 SPD "adequately discloses" the new SBA Offset under the Signal  
19 Retirement Plan. (*See Allen*, 382 F. Supp. 2d at 1170.)

20 Paragraph 31 is also disputed to the extent that the May 1984 SPD could not  
21 effect an amendment of either the Signal Retirement Plan effective January 1, 1984 or,  
22 as Plaintiffs' now try to argue, the 1976 Signal Plan. (*See* Signal Retirement Plan,  
23 attached hereto at Tab 71, at § 8.6 at HW0000373-374 (providing that, other than an  
24 exception not applicable here, the Signal Retirement Plan could only be "amended or  
25 otherwise modified . . . by the Board of Directors[.]"); Sept. 2010 Kroll Decl., PSOF  
26 Exh. T, at Exh. 2, at § 6.6 at HW0025348 ("...the Plan may be wholly or partially  
27 amended or otherwise modified, including retroactive amendments to meet  
28 governmental requirements, from time to time by the Board of Directors."); *see also*

1 DSAF ¶¶ 28-29.)

2 **PSOF 32 RESPONSE:** Because the Two Remaining Claims are limited to and  
 3 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 4 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 5 move to strike paragraph 32 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 6 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 7 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) To the extent Plaintiffs are using this paragraph  
 8 to establish that the May 1984 was the plan document, any claims relating to whether the  
 9 May 1984 SPD was the plan document after the merger were settled and released. (*See*  
 10 DSAF ¶¶ 59-70, 88-97; *see also* PSA Motion at Section III.D.) Subject to and without  
 11 waiving Defendants’ objections, to the extent the Court does not strike paragraph 32,  
 12 paragraph 32 is undisputed.

13 **PSOF 33 RESPONSE:** Because the Two Remaining Claims are limited to and  
 14 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 15 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 16 move to strike paragraph 33 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 17 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 18 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) To the extent Plaintiffs are using this paragraph  
 19 to establish that the May 1984 was the plan document, Plaintiffs have settled and  
 20 released any claims relating to whether the May 1984 SPD was the plan document after  
 21 the merger. (*See* DSAF ¶¶ 59-70, 88-97; *see also* PSA Motion at Section III.D.)

22 Subject to and without waiving Defendants’ objections, to the extent the Court  
 23 does not strike paragraph 33, contrary to LRCiv 56.1(a), Plaintiffs assert multiple facts  
 24 that purport to be material within paragraph 33. Defendants respond to each purported  
 25 “material fact” in turn.

26 Paragraph 33 is disputed to the extent that Plaintiffs assert that the May 1984 SPD  
 27 “did not include any changes to the calculation” of the SBA offset. The change to the  
 28 SBA Offset was set forth in the Signal Retirement Plan effective January 1, 1984. (*See*

1 DSOF ¶¶ 42, 45.) That offset was known by at least December 1983, and the Plan was  
2 administered with that new offset as of January 1, 1984 while the formal plan documents  
3 were finalized. (DSAF ¶¶ 10-26.) The May 1984 SPD could not effect an amendment  
4 of either the Signal Retirement Plan effective January 1, 1984 or, as Plaintiffs' now try  
5 to argue, the 1976 Signal Plan. (*See* Signal Retirement Plan, attached hereto at Tab 71,  
6 at § 8.6 at HW0000373-374 (providing that, other than an exception not applicable here,  
7 the Signal Retirement Plan could only be "amended or otherwise modified . . . by the  
8 Board of Directors[.]"); Sept. 2010 Kroll Decl., PSOF Exh. T, at Exh. 2, at § 6.6 at  
9 HW0025348 ("...the Plan may be wholly or partially amended or otherwise modified,  
10 including retroactive amendments to meet governmental requirements, from time to time  
11 by the Board of Directors."); *see also* DSAF ¶¶ 28-29.) The May 1984 also disclosed  
12 the SBA Offset by explaining that if a participant does not transfer his or her SBA to the  
13 Retirement Plan, the "NORMAL RETIREMENT benefit will be somewhat reduced."  
14 (May 1984 SPD, attached hereto at Tab 73, at HW0000435.) The Court has already held  
15 that the May 1984 SPD "adequately discloses" the new SBA Offset under the Signal  
16 Retirement Plan. (*See Allen*, 382 F. Supp. 2d at 1170.)

17 Defendants also object and move to strike pursuant to LRCiv 7.2(m) and 56.1(a)  
18 Plaintiffs' statement regarding "early retirement reduction factors" as failing to set forth  
19 a "material fact" that is relevant to resolution of the Two Remaining Claims. (*See also*  
20 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Plaintiffs have settled and released any and all  
21 claims relating to early retirement benefits under the Garrett, Signal, and/or successor  
22 Plans. (*See* DSAF ¶¶ 59-70, 83-87; *see also* PSA Motion at Section III.C.) Not only is  
23 an early retirement benefits claim settled and released, but the Signal Retirement Plan's  
24 savings clause protected these early retirement benefits from being cut back. (*See* DSOF  
25 ¶¶ 51-58; *see also* Opp. Brief at Section II.A.1(iv).) Mr. Denlinger applied the early  
26 commencement factors in effect under the Garrett Retirement Plan as of 12/31/83 in  
27 calculating participants' Garrett accrued benefit. (Jul. 14 2010 Denlinger Dep., attached  
28 hereto at Tab 99, at 128:8-131:23.) That protection and practice foreclose the possibility

1 of a cutback in accrued benefits with respect to these benefits terms.

2 **PSOF 34 RESPONSE:** Because the Two Remaining Claims are limited to and  
 3 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 4 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 5 move to strike paragraph 34 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 6 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 7 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) To the extent Plaintiffs are using this paragraph  
 8 to establish that the May 1984 was the plan document, Plaintiffs have settled and  
 9 released any claims relating to whether the May 1984 SPD was the plan document after  
 10 the merger. (*See* DSAF ¶¶ 59-70, 88-97; *see also* PSA Motion at Section III.D.) Subject  
 11 to and without waiving Defendants’ objections, to the extent the Court does not strike  
 12 paragraph 34, paragraph 34 is undisputed.

13 **PSOF 35 RESPONSE:** Because the Two Remaining Claims are limited to and  
 14 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 15 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 16 move to strike paragraph 35 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 17 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 18 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) To the extent Plaintiffs are using this paragraph  
 19 to establish that the May 1984 SPD was the plan document, Plaintiffs have settled and  
 20 released any claims relating to whether the May 1984 SPD was the plan document after  
 21 the merger. (*See* DSAF ¶¶ 59-70, 88-97; *see also* PSA Motion at Section III.D.)

22 Subject to and without waiving Defendants’ objections, to the extent the Court  
 23 does not strike paragraph 35, paragraph 35 is disputed in part. That the May 1984 SPD  
 24 defined “Accrued Retirement Benefits” as quoted is undisputed. Defendants object and  
 25 move to strike pursuant to LRCiv 7.2(m) and 56.1(a) the introductory sentence of  
 26 paragraph 35 as improper legal argument and not a “material fact.” Subject to and  
 27 without waiving its objections, to the extent the Court does not strike that sentence, it is  
 28 disputed. Directly above the definition of “Accrued Retirement Benefits” cited by

1 Plaintiffs, the May 1984 SPD states: “These definitions are general in nature and are not  
 2 intended to be legal definitions to be applied to the formal text of the retirement plan.”  
 3 (May 1984 SPD, attached hereto at Tab 73, at HW0000443.) Moreover, the May 1984  
 4 SPD also explains that, to the extent the wording of the May 1984 SPD conflicts with the  
 5 Signal Plan’s provisions protecting accrued benefits, the Plan Document governs. (*Id.* at  
 6 0000431 (“This material is intended to provide you with a convenient summary of your  
 7 Retirement Plan by describing the more important features of the Plan. If there is a  
 8 conflict between this wording and the wording in the legal Plan Document, the legal  
 9 Plan Document will govern.”).) The governing definition of “Accrued Benefit” under  
 10 the Signal Retirement Plan is set out at DSOF ¶¶ 51-58.

11 **PSOF 36 RESPONSE:** Paragraph 36 is undisputed to the extent that the Signal  
 12 Retirement Plan was formally amended and restated effective January 1, 1984. Due to  
 13 the passage of time, to the best of Defendants’ knowledge, the amended and restated  
 14 Signal Retirement Plan was formally executed on February 4, 1985. Based on the  
 15 evidence available to Defendants by February 2009, the February 4, 1984 date appears to  
 16 have been a mistake, input by a signatory who is now deceased, given that there are  
 17 drafts of the plan that were exchanged through early 1985. (Doc. 507, attached hereto at  
 18 Tab 79, at 39.) In addition, that signatory “did not have the vice president title that he  
 19 signed under until . . . the end of 1984.” (May 25, 2010 Deposition Transcript of Kevin  
 20 Covert, attached to PSOF at Exh. A (“Covert Dep, PSOF Exh. A”), at 15:10-21.)  
 21 Regardless, the core features of the amended and restated Plan were known by at least  
 22 December 1983, and the Plan was administered consistent with those terms from January  
 23 1, 1984 through the date of the formal Plan execution. (DSAF ¶¶ 10-26.) For example,  
 24 by January 1984 at the latest, the SBA Offset had already been communicated to plan  
 25 administrators, and was specifically explained as using a split 3.5%/7.5% projection  
 26 forward interest rate under the terms of the Signal Retirement Plan effective January 1,  
 27 1984. (*See* DSAF ¶ 13.) Furthermore, the plan administrators were using a memo  
 28 prepared by the plan’s actuary, Mr. Coffey, in January 1984 as a “uniform” tool when

1 “calculating benefits,” including the SBA Offset. (DSAF ¶ 14.) The plan was  
 2 administered consistent with those terms from January 1, 1984 through the February 5,  
 3 1985 execution date. (*See* DSAF ¶¶ 16-26.)

4 **PSOF 37 RESPONSE:** Because the Two Remaining Claims are limited to and  
 5 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 6 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 7 move to strike paragraph 37 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 8 a “material fact” that is relevant to resolution of the Two Remaining Claims. The date  
 9 Defendants’ learned that the Signal Retirement Plan, effective January 1, 1984, was  
 10 signed in February 1985 is not a genuine issue of material fact that could prevent  
 11 Plaintiffs’ Two Remaining Claims from being decided by the Court as a matter of law.  
 12 (*See also* Fed. R. Evid. 56; LRCiv 56.1.) Subject to and without waiving its objections,  
 13 to the extent the Court does not strike paragraph 37, it is disputed in part. As Defendants  
 14 explained, the documents were “created more than 20 years ago and the person who  
 15 signed the Plan...executed on 2/4/84, is deceased.” (Doc. 507, attached hereto at Tab  
 16 79, at 39.) Defendants incorporate herein by reference their response to paragraph 36.

17 **PSOF 38 RESPONSE:** Because the Two Remaining Claims are limited to and  
 18 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 19 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 20 move to strike paragraph 38 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 21 a “material fact” that is relevant to resolution of the Two Remaining Claims to the extent  
 22 it compares the “Signal Plan” to the “1976 Signal Plan,” which is not at issue in this  
 23 case. (*See also* Fed. R. Civ. P. 56; Fed. R. Evid. 402.) The 1976 Signal Plan has never  
 24 been at issue in this case, and Plaintiffs have settled and released any claim relating to it.  
 25 (*See* DSAF ¶¶ 59-70, 76-78; *see also* PSA Motion at Section III.A.) The 1976 Signal  
 26 Plan has never previously been authenticated or subject to discovery, as evidenced by the  
 27 fact it has been submitted on summary judgment through an affidavit from Plaintiffs’  
 28 counsel. (*See* Doc. 686, Ex. T, Ex. 2.) The Signal Retirement Plan that admitted former



1 participants of the Garrett Retirement Plan was the amended and restated Signal  
2 Retirement Plan, effective January 1, 1984. (*See* DSOF ¶¶ 22-23, 25-26, DR-PSOF ¶  
3 26; *see also* Opp. Brief at Sections II.A.1(i) and II.B.3.)

4 Subject to and without waiving Defendants' objection, paragraph 38 is undisputed  
5 except to the extent it fails to recognize that the quoted formula was designed to achieve  
6 the same result as the Garrett Retirement Plan's Social Security integration provision,  
7 and that a 1% minimum benefits formula ensured that lower-paid employees would  
8 receive the same 1% of compensation without a reduction for Social Security as they had  
9 received under the Garrett Retirement Plan. (*See* DSOF ¶¶ 28-32.) Furthermore, the  
10 Social Security formula in the Signal Plan, effective January 1, 1984 was also subject to  
11 the SBA offset. (*See* DSOF ¶¶ 36-37.)

12 **PSOF 39 RESPONSE:** Paragraph 39 is undisputed. (*See* DSOF ¶ 31.)  
13 Plaintiffs' expert has explained that this 1% minimum benefit formula is "identical" to  
14 the maximum Social Security deduction formula in the Garrett Retirement Plan. (*See*  
15 DSOF ¶ 33.)

16 **PSOF 40 RESPONSE:** Paragraph 40 is disputed in part. The McLeod  
17 deposition testimony and exhibit cited by Plaintiffs refer to a draft version of the Signal  
18 Plan and negotiations between Signal and Garrett pertaining to the Plan's terms. The  
19 citation to Mr. Holland's Rebuttal Report is to a paragraph that argues about the  
20 potential impact of the plan merger on early retirement benefits, which is a settled and  
21 barred claim. (*See* DSAF ¶¶ 59-70, 83-87; *see also* PSA Motion at Section III.C.) Not  
22 only is an early retirement benefits claim settled and released, but the Signal Retirement  
23 Plan's savings clause protected these early retirement benefits from being cut back. (*See*  
24 DSOF ¶¶ 51-58; *see also* Opp. Brief at Section II.A.1(iv).) Mr. Denlinger applied the  
25 early commencement factors in effect under the Garrett Retirement Plan as of 12/31/83  
26 in calculating participants' Garrett accrued benefit. (Jul. 14 2010 Denlinger Dep.,  
27 attached hereto at Tab 99, at 128:8-131:23.) That protection and practice foreclose the  
28 possibility of a cutback in accrued benefits with respect to these benefits terms.



1 Plaintiffs' citation to Mr. Poulin's report is to a paragraph that ignores the impact of the  
 2 1% minimum benefit formula, which Mr. Poulin has explained was "identical" to the  
 3 maximum Social Security deduction formula used in the Garrett Retirement Plan. (*See*  
 4 DSOF ¶ 33.)

5 It is undisputed that the final plan terms ensured that Garrett employees would not  
 6 receive lesser benefits under the Signal Retirement Plan than they received under the  
 7 Garrett Retirement Plan. (*See* DSOF ¶¶ 59-62.) It is also undisputed that the Signal  
 8 Plan's Social Security integration formula was designed to achieve the same result as the  
 9 Garrett Retirement Plan's Social Security integration provision. (*See* DSOF ¶ 30.)  
 10 Because the Signal Retirement Plan also provided for a 1% minimum benefit formula,  
 11 lower-paid employees would receive the same 1% of compensation without reduction  
 12 for Social Security as they had received under the Garrett Retirement Plan. (*See* DSOF  
 13 ¶¶ 31-33.) For higher-paid employees, the Signal Retirement Plan's direct integration  
 14 with Social Security, and its more generous definition of final average compensation,  
 15 resulted in a smaller reduction for Social Security than under the Garrett Plan. (*See*  
 16 DSOF ¶¶ 34-35.)

17 **PSOF 41 RESPONSE:** Paragraph 41 is disputed. The deposition testimony from  
 18 Mr. Coffey that Plaintiffs cite makes clear that lower-paid Garrett employees never  
 19 received reduced benefits under the Signal Plan. (April 28, 2010 Deposition Transcript  
 20 of William Coffey, attached to PSOF at Exh. G ("Coffey Dep., PSOF Exh. G"), at  
 21 119:10-12 ("When you asked me about a lower paid participant receiving lesser benefits  
 22 under the Signal Plan than the Garrett plan, it never occurred."); *see also* DSOF ¶¶ 28-  
 23 33; 51-58.)

24 **PSOF 42 RESPONSE:** Paragraph 42 is disputed in part. It is undisputed that  
 25 "Credited Service," as used in section 4.2(b) of the Signal Retirement Plan, (*see* DSOF ¶  
 26 28), is defined as "the pre-January 1, 1984 Credited Service of an Employee who was a  
 27 participant in a plan which merged with this [Signal Retirement] Plan effective January  
 28 1, 1984 shall equal the service credited to him for benefit accrual purposes as of

December 31, 1983 under the applicable provisions of the prior plan.” (Signal Retirement Plan, DSOF Tab 19, at § 1.16(a) at HW0000320.)

Paragraph 42 is disputed to the extent that “Credited Service” was not a factor in the 1% minimum benefits formula contained in section 4.2(c) of the Signal Retirement Plan, which qualifies the Normal Retirement Benefit formula set out in section 4.2(b) of the Signal Retirement Plan. (*Id.* at §§ 4.2(b)-(c) at HW0000336.) Paragraph 42 is also disputed because Section 4.2(b)(ii) of the Signal Retirement Plan provides that the Social Security offset is “1.5% of [the participant’s] Primary Social Security Benefit multiplied by his Credited Service (not in excess of 33 1/3 years)....” (*Id.* at § 4.2(b)(ii) at HW0000336.)

**PSOF 43 RESPONSE:** Contrary to LRCiv 56.1(a), Plaintiffs assert multiple facts that purport to be material within paragraph 43. Defendants respond to each purported “material fact” in turn.

The first sentence of paragraph 43 is disputed to the extent that the Signal Retirement Plan was effective January 1, 1984, (*see* DSOF ¶¶ 26-26), and continued the substantive Garrett methodology for calculating the offset, with one change in the projection-forward interest rate from 3.5% to 7.5% for the “Remainder Amount,” a portion of the SBA balance. (*See* DSOF ¶¶ 36-45.) That change in the offset was known by at least December 1983, and the Plan was administered consistent with that change from January 1, 1984 through the date of the formal Plan execution. (DSAF ¶¶ 10-26.)

That Plaintiffs quote the Signal Retirement Plan’s § 4.2(e)(i) is undisputed.

**PSOF 44 RESPONSE:** Contrary to LRCiv 56.1(a), Plaintiffs assert multiple facts that purport to be material within paragraph 44. Defendants respond to each purported “material fact” in turn.

Defendants object and move to strike pursuant to LRCiv. 7.2(m) and 56.1(a) Plaintiffs’ reference to “early retirement factors” on two grounds:

- Because the Two Remaining Claims are limited to and require proof that the amendment of the Signal Retirement Plan violated ERISA § 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike paragraph 44 as failing to set forth a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also* Fed. R. Civ. P. 56; Fed. R. Evid. 402) Plaintiffs have settled and released any and all claims relating to early retirement benefits under the Garrett, Signal, and/or successor Plans. (*See* DSAF ¶¶ 59-70, 83-87; *see also* PSA Motion at Section III.C.)
- The reference should be stricken for the additional reason that it fails to cite to a “specific admissible portion of the record where the [purported] fact finds support.” The lone “Second Supplement to Declaration and Rebuttal Report of James E. Holland” Plaintiffs cite is inadmissible because it (a) was improperly submitted long after expert discovery closed; (b) relies on data that was available to Mr. Holland well before the extended July 23, 2010 deadline for Plaintiffs’ rebuttal expert reports; (c) does not contain rebuttal testimony; (d) offers opinions on matters that are settled and barred; and (e) was submitted unsigned and without the supporting calculations. (*See* DSAF ¶¶ 30-52; *see also* Opp. Br. at Section II.C.)

Subject to and without waiving Defendants’ objections, paragraph 44 is disputed in part.

Plaintiffs cite to Defendants’ Response to Plaintiffs’ Request for Admission 13, but do not provide the text of the Request itself. The Request stated: “The Signal Retirement Plan dated as of October 1985 was the first Plan adopted and effective to incorporate provisions governing the calculation of the SBA offset.” (*See* Defendants’ Responses & Objections to Plaintiffs’ Request for Admissions, attached hereto at Tab 80, at No. 13.) Defendants’ denied that Request and responded that “[t]he Signal Retirement Plan document dated February 4, 1984, effective January 1, 1984, was the first Signal Retirement Plan document to incorporate provisions governing the calculation of the SBA offset.” (*Id.*) The Signal Retirement Plan continued the substantive Garrett methodology for calculating the offset, with one change in the projection forward interest rate from 3.5% to 7.5% for the “Remainder Amount,” a portion of the SBA balance. (*See* DSOFF ¶¶ 36-45.) That change in the offset was known by at least December 1983, and the Plan was administered consistent with that change from January 1, 1984 while the formal plan documents were finalized. (DSAF ¶¶ 10-26.) The May 1984 SPD simply summarized the features of the Signal Retirement Plan effective January 1, 1984. The Court has already held that the May 1984 SPD

1 “adequately discloses” the new SBA Offset under the Signal Retirement Plan. (*See*  
2 *Allen*, 382 F. Supp. 2d at 1170.)

3 Not only is an early retirement benefits claim settled and released, but the Signal  
4 Retirement Plan’s savings clause protected these early retirement benefits from being cut  
5 back. (*See* DSOF ¶¶ 51-58; *see also* Opp. Brief at Section II.A.1(iv).) Mr. Denlinger  
6 applied the early commencement factors in effect under the Garrett Retirement Plan as  
7 of 12/31/83 in calculating participants’ Garrett accrued benefit. (Jul. 14 2010 Denlinger  
8 Dep., attached hereto at Tab 99, at 128:8-131:23.) That protection and practice foreclose  
9 the possibility of a cutback in accrued benefits with respect to these benefits terms.  
10 There can therefore be no genuine dispute of material fact as to those factors that is  
11 relevant to summary judgment disposition of the Two Remaining Claims.

12 **PSOF 45 RESPONSE:** Defendants object and move to strike pursuant to LRCiv.  
13 7.2(m) and 56.1(a) paragraph 45 as failing to set forth a “material fact” that refers to “a  
14 specific admissible portion of the record where the fact finds support” because paragraph  
15 45 (1) offers legal conclusions; (2) is argumentative; (3) contains a series of facts; and is  
16 not supported by the record citation (which refers to the definition of defined benefit  
17 plans and defined contribution plans).

18 Subject to and without waiving Defendants’ objections, to the extent the Court  
19 does not strike paragraph 45, it is disputed in part. The first two sentences of paragraph  
20 45 are undisputed, except that the Signal Plan was amended January 1, 1984 for a variety  
21 of reasons, not just “to increase the projected earnings rate in the offset calculation from  
22 3.5% to 7.5% for Remainder Amounts, which was the term applied to anything in the  
23 offset account above what was projected by applying 3.5% interest to the Severance  
24 Account as of 12/31/83 prior to the Garrett Severance Plan’s allocation of the surplus  
25 assets existing in the Garrett Severance Plan on that date.” (*See, e.g.*, DSOF ¶¶ 25, 31,  
26 59-71.) The third sentence in paragraph 45 is disputed because (1) Mr. Sher has not  
27 “said” that the rules of the Garrett Plan as of 12/31/83 “should have been protected going  
28 forward” (*see* DSOF ¶ 58); and (2) this Court has already explained that the protected

1 “accrued benefit” under ERISA is the “dollar amount of the annuity at retirement—i.e.,  
 2 the product of the plan’s benefit formula. That is what the participant receives and what  
 3 he is concerned with when he attains normal retirement age—money, not intangible  
 4 components of a benefit formula like an interest rate or a fractional reduction in an  
 5 offset.” (*Allen*, 382 F. Supp. 2d at 1151.) The fourth sentence is disputed because the  
 6 Signal Retirement Plan effective January 1, 1984 did protect the accrued benefits under  
 7 the Garrett Plan. (*See* DSOF ¶¶ 51-58.) What is more, the Signal Retirement Plan  
 8 effective January 1, 1984 resulted in significant benefit increases to all participants  
 9 except those affected by an operational error, and those operational errors have been or  
 10 are in the process of being corrected. (*See* DSOF ¶¶ 59-84.)

11 **PSOF 46 RESPONSE:** Contrary to LRCiv 56.1(a), Plaintiffs assert multiple  
 12 facts that purport to be material within paragraph 46. Defendants respond to each  
 13 purported “material fact” in turn.

14 The first sentence of paragraph 46 is disputed. Contrary to LRCiv 56.1(a),  
 15 Plaintiffs have failed to “refer to a specific admissible portion of the record where the  
 16 fact finds support.” Section 4.10(c)(ii) of the Signal Retirement Plan effective January 1,  
 17 1984 protects the “Accrued Benefit” of any former Garrett employee whose employment  
 18 continued after January 1, 1984. (*See* DSOF ¶ 54.) There is no limitation on the  
 19 temporal scope of that section’s protection of accrued benefits. (*See* DSOF ¶¶ 51-58; *see*  
 20 *also* ¶ 214.)

21 The second sentence of paragraph 46 is undisputed.

22 The last sentence of paragraph 46 is disputed as to the word “however” because  
 23 the Garrett Plan provision described does not conflict with the provisions of the Signal  
 24 Plan previously cited.

25 **PSOF 47 RESPONSE:** Paragraph 47 is undisputed.

26 **PSOF 48 RESPONSE:** Defendants object and move to strike pursuant to LRCiv  
 27 7.2(m) and 56.1(a) paragraph 48 on numerous grounds:  
 28

- Because the Two Remaining Claims are limited to and require proof that the amendment of the Signal Retirement Plan violated ERISA § 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike paragraph 48 as failing to set forth a “material fact” that is relevant of resolution to the Two Remaining Claims. (*See also* Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Plaintiffs have settled and released any and all claims relating to early retirement benefits under the Garrett, Signal, and/or successor Plans. (*See* DSAF ¶¶ 59-70, 83-87; *see also* PSA Motion at Section III.C.)
- Paragraph 48 should be stricken for the additional reason that it fails to cite to a “specific admissible portion of the record where the [purported] fact finds support.” The lone “Second Supplement to Declaration and Rebuttal Report of James E. Holland” Plaintiffs cite is inadmissible because it (a) was improperly submitted long after expert discovery closed; (b) relies on data that was available to Mr. Holland well before the extended July 23, 2010 deadline for Plaintiffs’ rebuttal expert reports; (c) does not contain rebuttal testimony; (d) offers opinions on matters that are settled and barred; and (e) was submitted unsigned and without the supporting calculations. (*See* DSAF ¶¶ 30-52; *see also* Opp. Br. at Section II.C.)

Subject to and without waiving Defendants’ objections, to the extent the Court does not strike paragraph 48, it is disputed in part. The Signal Retirement Plan, effective January 1, 1984, included a savings clause that protected these early retirement benefits from being cut back. (*See* DSOF ¶¶ 51-58; *see also* Opp. Brief at Section II.A.1(iv).) Mr. Denlinger applied the early commencement factors in effect under the Garrett Retirement Plan as of 12/31/83 in calculating participants’ Garrett accrued benefit. (Jul. 14 2010 Denlinger Dep., attached hereto at Tab 99, at 128:8-131:23.) That protection and practice foreclose the possibility of a cutback in accrued benefits with respect to these benefits terms. By Plaintiffs’ own calculations, only 260 of the approximately 13,000 participants they considered when doing their calculations received an actual benefit at retirement that was purportedly less than their Garrett accrued benefit. (*See* DSOF ¶¶ 76-78.) The correct figure is 115 (*See* DSOF ¶ 79), and benefits for those participants affected by an administrative error have already been corrected, or are in the process of being corrected. (*See* DSOF ¶¶ 80-84.)

**PSOF 49 RESPONSE:** Paragraph 49 is disputed. Plaintiffs’ expert, Claude Poulin, admitted that a participant’s gross benefit under the Garrett Retirement Plan could not be greater than his or her gross benefit under the Signal Retirement Plan. (June 18, 2010 Deposition Transcript of Claude Poulin Dep., attached to DSOF at Tab



1 10 (“Jun. 2010 Poulin Dep.”), at 520:13-18 (“Q. Is it mathematically possible for the  
2 gross benefit under Garrett to be better than the gross benefit under Signal? A. If there  
3 is no minimum benefit offset, probably not.”) (objection omitted.) Defendants also  
4 incorporate herein by reference their response to paragraph 48, above.

5 **PSOF 50 RESPONSE:** Because the Two Remaining Claims are limited to and  
6 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
7 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
8 move to strike paragraph 50 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
9 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See* Fed.  
10 R. Civ. P. 56; Fed. R. Evid. 402.)

11 Subject to and without waiving Defendants’ objection, to the extent the Court  
12 does not strike paragraph 50, it is undisputed.

13 **PSOF 51 RESPONSE:** Because the Two Remaining Claims are limited to and  
14 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
15 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
16 move to strike paragraph 51 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
17 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See* Fed.  
18 R. Civ. P. 56; Fed. R. Evid. 402.) The “typical language” of a savings clause is not at  
19 issue.

20 Subject to and without waiving Defendants’ objection, to the extent the Court  
21 does not strike paragraph 51, it is disputed. Mr. Holland conceded that it was  
22 “reasonable” to interpret the Signal Retirement Plan as protecting accrued benefits  
23 without limitation on the temporal scope of that protection—the operative interpretation  
24 of Defendants. (*See* DSAF ¶¶ 51-58; 214.)

25 **PSOF 52 RESPONSE:** Because the Two Remaining Claims are limited to and  
26 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
27 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
28 move to strike paragraph 52 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth



1 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 2 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) A participant’s ability to transfer his SBA to the  
 3 Signal Retirement Plan is not part of the SBA Offset Claim. (*See* DSAF ¶ 65; *see also*  
 4 PSA Motion at Sections II & III.)

5 Subject to and without waiving Defendants’ objection, to the extent the Court  
 6 does not strike paragraph 52, it is disputed. The deposition testimony cited contradicts  
 7 Plaintiffs’ allegation and refers to periods prior to July 1987. (*See* May 22, 2010  
 8 Deposition Transcript of James McLeod, attached hereto at Tab 93 (“McLeod Dep.”), at  
 9 160:12-161:2 (referring to Question and Answer 17 in the May 1984 SPD).) By July 1,  
 10 1987, an employee could transfer his SBA balances to the Retirement Plan, leave the  
 11 SBA balance in earning 12.3% interest, or withdraw it upon termination. (May 28, 2010  
 12 Deposition Transcript of Jean Payne, attached hereto at Tab 97 (“Payne Dep.”), at 39:22-  
 13 40:16.)

14 **PSOF 53 RESPONSE:** Because the Two Remaining Claims are limited to and  
 15 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 16 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 17 move to strike paragraph 53 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 18 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 19 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Plaintiffs have settled and released any and all  
 20 claims relating to the Signal Savings Plan as amended through December 23, 1988, and a  
 21 participant’s ability to transfer his SBA to the Signal Retirement Plan is not part of the  
 22 SBA Offset Claim. (*See* DSAF ¶¶ 65-66; *see also* PSA Motion at Sections II & III.)

23 Subject to and without waiving Defendants’ objection, to the extent the Court  
 24 does not strike paragraph 53, it is disputed in part. That Section 16.6 of the Eighth  
 25 Amendment to the Signal Savings Plan, executed December 31, 1983, provided for a  
 26 transfer of the SBA account to the Signal Retirement Plan is undisputed. The Signal  
 27 Retirement Plan, effective January 1, 1984, provided that a plan participant with an SBA  
 28 could elect to transfer his or her SBA into the Signal Retirement Plan. (Signal

1 Retirement Plan, DSOF Tab 19, at § 4.2(e)(i); July 2, 2010 Declaration of Kurt  
2 Denlinger, attached to DSOF at Tab 8 (“Jul. 2010 Denlinger Decl.”), at ¶ 8.)

3 **PSOF 54 RESPONSE:** Paragraph 54 is disputed in part. It is undisputed that  
4 Mr. Poulin’s cited paragraph 18 reports that he “recomputed and compared normal  
5 retirement benefits, *i.e.*, the accrued benefits payable at the normal retirement age of 65  
6 under the Garrett Retirement Plan benefits formulas as if each participant had terminated  
7 employment on December 31, 1983, and the normal retirement benefits, *i.e.*, the accrued  
8 benefits payable at the normal retirement age of 65 under the Signal Plan benefits  
9 formulas as if each participant had terminated employment on January 1, 1984,” and that  
10 “[b]ased on this calculation,” he calculated that 71% “of all Garrett Retirement Plan  
11 participants experienced a reduction in their accrued benefits as of January 1, 1984 under  
12 the Signal Plan compared to their accrued benefits under the Garrett Retirement Plan as  
13 of December 31, 1983.” (*See* DSOF ¶¶ 85-86.)

14 Paragraph 54 is disputed to the extent that Mr. Poulin’s methodology for  
15 performing that calculation is flawed, as it depends upon his ignoring the Signal  
16 Retirement Plan’s savings clause protections, assumes a uniform hypothetical  
17 termination date of January 1, 1984 for the more than 13,000 evaluated participants  
18 when only one participant in fact terminated on that date (and his benefits improved  
19 under the Signal Retirement Plan), and ignores whether a participant elected to transfer  
20 his or her SBA to the Signal Retirement Plan. (*See* DSOF ¶¶ 86-88.) As Mr. Poulin has  
21 acknowledged, the offset under the Signal Retirement Plan cannot be calculated until the  
22 date of the employee’s termination. (*See* DSOF ¶ 43; *see also* DSOF ¶¶ 38-42.)

23 Paragraph 54 is further disputed to the extent that Mr. Holland’s cited paragraph  
24 31 assumes the Signal Retirement Plan did not have a 1% minimum benefits formula and  
25 evaluates the SBA and Social Security Offsets on a stand-alone basis, without applying a  
26 net effects analysis. It is further disputed to the extent that Mr. Altman’s cited  
27 deposition testimony is caveated by Mr. Altman as assuming that the savings clause  
28 protection afforded under the Signal Retirement Plan was disregarded. (*See also* August

24, 2010 Deposition Transcript of Ian Altman, attached hereto at Tab 102 (“Altman Dep.”), at 292:8-15.) Mr. Altman further testified that he did not independently review Mr. Poulin’s calculations. (*Id.* at 291:25-292:7.)

**PSOF 55 RESPONSE:** Because the Two Remaining Claims are limited to and require proof that the amendment of the Signal Retirement Plan violated ERISA § 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike paragraph 55 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also* Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Mr. Poulin’s cited paragraph 24 relates to his argument on liability under Plaintiffs’ Minimum Benefits Claim, on which the Court granted summary judgment in favor of Defendants. (Doc. 555; *see also* June 4, 2010 Declaration of Claude Poulin, attached to DSOF at Tab 6 (“Jun. 2010 Poulin Decl.”), at ¶ 23.) Mr. Poulin acknowledged that his June 4, 2010 Report failed to account for the Court’s minimum benefits ruling. (*See* Jun. 2010 Poulin Dep., attached hereto at Tab 98, at 405:8-11 (“Q. Is it fair to say that your June 4, 2010 report makes no alteration to account for the October 9, 2009 [minimum benefits] ruling from Judge Silver? A. That’s correct.”).)

Subject to and without waiving Defendants’ objection, to the extent that the Court does not strike paragraph 55, it is disputed. Mr. Poulin has otherwise acknowledged that the 1% minimum benefit formula in the Signal Retirement Plan was “identical” to the maximum Social Security deduction formula used in the Garrett Retirement Plan,” and that any difference between the two formulas worked to the advantage of participants under the Signal Retirement Plan. (*See* DSOF ¶¶ 33-35.) By Plaintiffs’ own calculations, only 260 of the approximately 13,000 participants they considered when doing their calculations received an actual benefit at retirement that was purportedly less than their Garrett accrued benefit. (*See* DSOF ¶¶ 76-78.) The correct figure is 115 (*see* DSOF ¶ 79), and benefits for those participants affected by an administrative error have already been corrected, or are in the process of being corrected. (*See* DSOF ¶¶ 80-84.)

1 Plaintiffs have also conceded in paragraph 55 that the 1% minimum benefits  
2 formula applied as of January 1, 1984.

3 **PSOF 56 RESPONSE:** To the extent Plaintiffs rely on the same record citations  
4 in paragraph 56 as those set forth in paragraph 54, Defendants incorporate herein by  
5 reference their response to paragraph 54. To the extent that in paragraph 56 Plaintiffs  
6 added a citation to Mr. Holland's Second Supplemental Report, Defendants object and  
7 move to move to strike pursuant to LRCiv. 7.2(m) and 56.1(a) paragraph 56 as failing to  
8 cite to a "specific admissible portion of the record where the [purported] fact finds  
9 support." Mr. Holland's purported Second Supplemental Report is inadmissible because  
10 it (a) was improperly submitted long after expert discovery closed; (b) relies on data that  
11 was available to Mr. Holland well before the extended July 23, 2010 deadline for  
12 Plaintiffs' rebuttal expert reports; (c) does not contain rebuttal testimony; (d) offers  
13 opinions on matters that are settled and barred; and (e) was submitted unsigned and  
14 without the supporting calculations. (*See* DSAF ¶¶ 30-52; *see also* Opp. Br. at Section  
15 II.C.)

16 Subject to and without waiving Defendants' objection, to the extent the Court  
17 does not strike Mr. Holland's purported Second Supplemental Report, Defendants  
18 further dispute paragraph 56. In his paragraphs 2-4, Mr. Holland explains that he was  
19 "asked to review and compare the accrued benefits of some participants under the  
20 Garrett Plan as of December 31, 1983 with the benefits under the Signal Plan as  
21 amended in February 1985 and taking into account service through January 1, 1985,"  
22 which resulted in his finding that "some" of those participants experienced a reduction in  
23 their already-accrued benefits. (September 17, 2010 Second Supplemental Declaration  
24 of James Holland, attached to PSOF at Exh. C ("Sept. 2010 Holland Supp. Decl."), at ¶¶  
25 2-4.) This "hypothetical termination" theory fails for the same reasons that Mr. Poulin's  
26 hypothetical termination calculations were flawed, and Defendants incorporate herein by  
27 reference their response to paragraph 54, above. Mr. Holland's hypothetical termination  
28 theory is further flawed to the extent it fails to acknowledge that the amended and

1 restated Signal Retirement Plan was effective as of January 1, 1984. (*See* DSOF ¶¶ 25-  
2 26.) Mr. Holland failed to provide the calculations for any of the unidentified  
3 participants who purportedly showed a reduction in already-accrued benefits as a result  
4 of these “hypothetical termination” calculations. Finally, paragraph 56 is disputed  
5 because there was no net reduction in the Garrett 12/31/83 accrued benefit by virtue of  
6 the Signal Retirement Plan’s savings clause provisions and the overall benefit  
7 improvements afforded to former Garrett Retirement Plan participants under the Signal  
8 Retirement Plan. (*See* DSOF ¶¶ 51-58; 65-73).

9 **PSOF 57 RESPONSE:** Contrary to LRCiv 56.1(a), Plaintiffs assert multiple  
10 facts that purport to be material within paragraph 57. Defendants respond to each  
11 purported “material fact” in turn.

12 Defendants object and move to strike pursuant to LRCiv 7.2(m) and 56.1(a) the  
13 first sentence in paragraph 57 for failing to cite to a “specific admissible portion of the  
14 record where the [purported] fact finds support.” Subject to and without waiving  
15 Defendants’ objection, to the extent the Court does not strike that sentence, it is disputed.  
16 By Plaintiffs’ own calculations, only 260 of the approximately 13,000 participants they  
17 considered when doing their calculations received an actual benefit at retirement that  
18 was purportedly less than their Garrett accrued benefit, none of which included a named  
19 Plaintiff. (*See* DSOF ¶¶ 76, 78.) By that same calculation, approximately 98% of the  
20 class received benefits under the Signal Retirement Plan at their actual date of retirement  
21 that were greater than their accrued benefit as of December 31, 1983 under the Garrett  
22 Retirement Plan. (*See* DSOF ¶ 77.) The correct figure is not 260, but 115 (*see* DSOF ¶  
23 79), and benefits for those participants affected by an administrative error have already  
24 been corrected, or are in the process of being corrected. (*See* DSOF ¶¶ 80-84.)

25 Defendants dispute the second sentence of paragraph 57. Mr. Poulin’s cited  
26 paragraph 54 is either referring to the 260 figure discussed above, or is referring to the  
27 analysis contained in Exhibit N to his June 4, 2010 Report. That analysis purports to  
28 determine “whether the Signal Plan provided higher or lower retirement benefits than the

Garrett Retirement Plan by comparing benefits under the two plans for each participant had each plan been in effect.” (See DSOF ¶¶ 94-97.) Mr. Poulin engaged in this “going forward” analysis even though he acknowledged that the Garrett plans ceased accruing benefits as of December 31, 1983 and that the SBA earned 12.3% after December 31, 1983. (See DSOF ¶¶ 99-100.) Thus, Exhibit N evidences a fundamental conceptual error that results in a substantially-understated SBA balance that Mr. Poulin uses as an offset and a correspondingly overstated “damages” amount. (See DSOF ¶ 98.) The page from Mr. Sher’s expert report that Plaintiffs cite addresses the significant computational errors that infected Mr. Poulin’s Exhibit N analysis, separate and apart from the fundamental conceptual error discussed above and at DSOF ¶ 98. Those computational errors are described in greater detail at Appendix II to Mr. Sher’s expert report, attached at Tab 1 to the DSOF.

To the extent the second sentence of paragraph 57 argues that there was a cutback in accrued benefits on January 1, 1984 as determined under Plaintiffs’ “hypothetical termination” theory, Defendants dispute paragraph 57 for the same reasons set forth in their response to paragraphs 54 and 56, above.

**PSOF 58 RESPONSE:** Contrary to LRCiv 56.1(a), Plaintiffs assert multiple facts that purport to be material within paragraph 58. Defendants respond to each purported “material fact” in turn.

Regarding the first sentence of paragraph 58, Defendants incorporate by reference their response to paragraph 57, above.

The second and third sentences of paragraph 58 are further disputed to the extent that, in his Exhibit N analysis, Mr. Poulin calculated a hypothetical Garrett SBA balance on an ongoing basis, even though (1) he acknowledged that the Garrett Severance Plan was terminated as of December 31, 1983 and that (2) the actual SBA balance at termination was known. (Jun. 2010 Poulin Dep., DSOF Tab 10, at 497:6-498:24.) Moreover, Mr. Poulin acknowledged that his calculations, based on ongoing contributions to the “Garrett Severance Plan,” were off by a factor of six, because he



1 allocated the 2% pay contribution based on one month's pay and not six month's pay, as  
 2 had been provided for under the terms of the Garrett Severance Plan. (June 18, 2010  
 3 Deposition Transcript of Claude Poulin, attached hereto at Tab 98 ("Jun. 2010 Poulin  
 4 Dep."), at 580:3-586:3.) Mr. Poulin also made other conceptual and computational  
 5 errors in performing his "Exhibit N" analysis. (*See* DSOF ¶¶ 96-100; *see also* Sher  
 6 Decl., DSOF at Tab 1, at Appendix II.)

7 **PSOF 59 RESPONSE:** Paragraph 59 is undisputed to the extent that, by  
 8 Plaintiffs' own calculations, only 260 of the approximately 13,000 participants they  
 9 considered when doing their calculations received an actual Signal benefit at retirement  
 10 that was purportedly less than their Garrett accrued benefit, none of which included a  
 11 named Plaintiff. (*See* DSOF ¶¶ 76, 78.) By that same calculation, approximately 98%  
 12 of the class received benefits under the Signal Retirement Plan at their actual date of  
 13 retirement that were greater than their accrued benefit as of December 31, 1983 under  
 14 the Garrett Retirement Plan. (*See* DSOF ¶ 77.) Paragraph 59 is disputed to the extent  
 15 the correct figure is not 260, but 115 (*see* DSOF ¶ 79), and benefits for those participants  
 16 affected by an administrative error have already been corrected, or are in the process of  
 17 being corrected. (*See* DSOF ¶¶ 80-84.) Paragraph 59 is further disputed to the extent  
 18 that Plaintiffs insinuate some irregularity with the clause "sometimes decades after the  
 19 merger." It is undisputed that the SBA offset under the Signal Retirement Plan could not  
 20 be calculated until the participant's date of termination. (*See* DSOF ¶ 43; *see also* DSOF  
 21 ¶¶ 38-42.) Finally, paragraph 59 is disputed to the extent that Mr. Poulin's July 23, 2010  
 22 Rebuttal Declaration is not provided at Plaintiffs' "Exh. L."

23 **PSOF 60 RESPONSE:** Defendants object and move to strike pursuant to LRCiv  
 24 7.2(m) and 56.1(a) paragraph 60 on numerous grounds. First, it contains legal argument,  
 25 not a "material fact." Second, it contains multiple purported "material facts." Third, it  
 26 fails refer to "a specific admissible portion of the record where the fact finds support" for  
 27 any one of those purported "material facts." The cited "July 23, 2010 Rebuttal Report of  
 28 Holland" does not support the legal argument set forth in paragraph 60. Instead, that

1 legal argument is set forth in Mr. Holland's purported Second Supplemental Declaration,  
2 at pages 4-5, ¶ 6. Mr. Holland's purported Second Supplemental Report is inadmissible  
3 because it (a) was improperly submitted long after expert discovery closed; (b) relies on  
4 data that was available to Mr. Holland well before the extended July 23, 2010 deadline  
5 for Plaintiffs' rebuttal expert reports; (c) does not contain rebuttal testimony; (d) offers  
6 opinions on matters that are settled and barred; and (e) was submitted unsigned and  
7 without the supporting calculations. (*See* DSAF ¶¶ 30-52; *see also* Opp. Br. at Section  
8 II.C.)

9       Subject to and without waiving Defendants' objection, to the extent the Court  
10 does not strike Mr. Holland's purported Second Supplemental Declaration, it is disputed.  
11 The July 2000 plan amendments in many cases enhanced, but it no cases reduced,  
12 participants' benefits. (*See* DSOF ¶ 71.) Moreover, by Plaintiffs' own calculations, only  
13 260 of the approximately 13,000 participants they considered when doing their  
14 calculations received an actual benefit at retirement that was purportedly less than their  
15 Garrett accrued benefit, none of which included a named Plaintiff. (*See* DSOF ¶¶ 76,  
16 78.) By that same calculation, approximately 98% of the class received benefits under  
17 the Signal Retirement Plan at their actual date of retirement that were greater than their  
18 accrued benefit as of December 31, 1983 under the Garrett Retirement Plan. (*See* DSOF  
19 ¶ 77.) The correct figure is not 260, but 115 (*see* DSOF ¶ 79), and benefits for those  
20 participants affected by an administrative error have already been corrected, or are in the  
21 process of being corrected. (*See* DSOF ¶¶ 80-84.)

22       **PSOF 61 RESPONSE:** Paragraph 61 is disputed. Mr. Poulin's cited paragraph  
23 35 reports the damages calculations he performed for the Social Security Offset Claim as  
24 a stand-alone claim. Mr. Poulin has admitted that he performed that stand-alone  
25 damages calculations in 2008, before the Court's August 2008 ruling on the net effects  
26 analysis. (*See* Jun. 2010 Poulin Dep., attached hereto at Tab 98, at 434:14-436:9; *see*  
27 *also* Doc. 481.) Mr. Poulin has also admitted that he made no changes to his 2008 stand-  
28 alone damages calculations in light of the court's net effects ruling. (*See* Jun. 2010

1 Poulin Dep., attached hereto at Tab 98, at 436:10-23.) Paragraph 61 is further disputed  
2 to the extent Mr. Poulin's analysis was based on a counter-factual hypothetical. It is  
3 undisputed that the Signal Retirement Plan's Social Security Offset applied to "Credited  
4 Service" under the Garrett Retirement Plan. (Signal Retirement Plan, DSOF Tab 19, at §  
5 1.16(a) at HW0000320.) Moreover, "Credited Service" included service under the  
6 Garrett Retirement Plan was communicated to former Garrett employees as early as the  
7 January 1984 brochure and the May 1984 SPD, (*see* DSOF ¶¶ 111, 116), so any claim  
8 relating to this fact is time-barred. (*See* Doc. 676 at 17-22.) Finally, paragraph 61 is  
9 disputed to the extent that the Garrett Retirement Plan was uniformly recognized, even  
10 by Plaintiffs' experts, to integrate with Social Security, (*see* DSOF ¶¶ 12-18), and  
11 Plaintiff's expert has further explained that the 1% minimum benefit formula under the  
12 Signal Retirement plan was "identical" to the maximum Social Security deduction under  
13 the Garrett Retirement Plan. (*See* DSOF ¶ 33.)

14 **PSOF 62 RESPONSE:** Paragraph 62 is disputed. Page 3, paragraph 7 of Mr.  
15 Poulin's June 16, 2008 declaration summarizes the Garrett Retirement Plan's floor-offset  
16 arrangement, and does not support the "material fact" paragraph 62 purports to present.  
17 Mr. Poulin has also admitted that the cited exhibits L & M analyzed damages under the  
18 SBA Offset Claim as a stand-alone claim, which analysis he performed in 2008 before  
19 the Court's net effects ruling, and which he has not changed to account for the Court's  
20 net effects ruling. (*See* Jun. 2010 Poulin Dep., attached hereto at Tab 98, at 436:1-23.)

21 **PSOF 63 RESPONSE:** Paragraph 63 is disputed in part. It is undisputed that, as  
22 a result of an operational error, a small number of participants initially received benefits  
23 that were less than they should have received if the savings clause had been applied  
24 properly, and that certain terminated participants with vested deferred benefits needed to  
25 have their benefit records corrected to reflect the benefits they are due under the terms of  
26 the Signal Retirement Plan, including the savings clause. (*See* DSOF ¶¶ 80-83.)

27 Paragraph 63 is disputed to the extent that Plaintiffs claim there were "numerous"  
28 participants affected by this administrative calculation error. There were a total of 115

1 participants: 23 in pay status, 2 deceased, and 90 who were not yet in pay status. (*See*  
 2 DSOF ¶¶ 80, 82-83.) Those who were not yet in pay status had not yet received any  
 3 retirement benefit, and those records were easily corrected without any “harm” to the  
 4 affected participant. (*See* DSOF ¶ 83.) Even under Plaintiffs’ own, over-stated  
 5 calculations, this error affected only 260 participants, meaning approximately 98% of the  
 6 class received equal or better benefits under the Signal Retirement Plan as of their actual  
 7 retirement date as compared to their accrued benefits under the Garrett Retirement Plan.  
 8 (*See* DSOF ¶¶ 76-77, 79.)

9 **PSOF 64 RESPONSE:** Defendants object and move to strike pursuant to LRCiv  
 10 7.2(m) and 56.1(a) paragraph 64 as failing to state a “material fact.” Whether Mr. Gates  
 11 has been informed of any adjustment in his pension benefits does not create a genuine  
 12 dispute as to whether Honeywell has corrected its benefit records to reflect the benefits  
 13 he is due under the terms of the Signal Plan, including the savings clause. (*See* DSOF ¶¶  
 14 80-83.)

15 Subject to and without waiving Defendants’ objection, to the extent the Court  
 16 does not strike paragraph 64, it is disputed to the extent that Mr. Gates is a terminated  
 17 participant with vested deferred benefits (*i.e.*, a participant who has terminated  
 18 employment with the company but is not yet in pay status). (*See* July 23, 2010  
 19 Declaration of Claude Poulin, attached to PSOF at Exh. O (“Jul. 2010 Poulin Decl.,  
 20 PSOF Exh. O”), at Exh. 1, Tab “Poulin DVested”; *see also* Jul. 2010 Denlinger Decl.,  
 21 DSOF Tab 8, at ¶ 17.) Because he was not yet in pay status at the time the  
 22 administrative records were corrected, he did not receive a distribution that was less than  
 23 he was entitled to under the Signal Retirement Plan, including the savings clause. (Jul.  
 24 2010 Denlinger Decl., DSOF Tab 8, at ¶ 18.)

25 **PSOF 65 RESPONSE:** Because the Two Remaining Claims are limited to and  
 26 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 27 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 28 move to strike paragraph 64 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth

1 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 2 Fed. R. Civ. P. 56; Fed. R. Evid. 402.)

3 Subject to and without waiving Defendants’ objection, to the extent the Court  
 4 does not strike paragraph 65, it is disputed to the extent that Mr. McLeod, the Director of  
 5 Compensation and Benefits at Garrett in 1984, (*see* DSOF ¶ 14), testified that “the  
 6 Signal Company” was “the holding company” in the context of responding to Plaintiffs’  
 7 counsel’s question about whether “the Signal Company was somewhat in charge of the  
 8 merger issues.” (McLeod Dep., PSOF Exh. H, at 34:17-25 (“Q. Is it fair to say that  
 9 during this period of time the Signal Company was somewhat in charge of the merger  
 10 issues? A. I don’t really know the answer to that. Signal companies was the Company  
 11 that owned the Garrett Corporation.”). (objection and instruction omitted).)

12 **PSOF 66 RESPONSE:** Because the Two Remaining Claims are limited to and  
 13 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 14 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 15 move to strike paragraph 66 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 16 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 17 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) The Garrett-Signal merger was not prompted by  
 18 the existence of a retirement plan surplus, (*see* DSOF ¶¶ 19-20), and any general  
 19 motivations for the corporate merger are not at issue in this lawsuit. Subject to and  
 20 without waiving Defendants’ objection, to the extent the Court does not strike paragraph  
 21 66, it is disputed to the extent that Mr. Coffey testified that he “analyzed the employee  
 22 benefit plans of the Signal Companies Inc. and compared them with the employee  
 23 benefit plans of Wheelabrator-Frye” and came to the conclusion that “the employee  
 24 benefit plans of the Signal Companies were overfunded and had surplus assets that might  
 25 be reverted in the event of a merger between Wheelabrator-Frye and Signal Companies.”  
 26 (April 28, 2010 Deposition Transcript of William Coffey, attached to PSOF at Exh. G  
 27 (“Coffey Dep., PSOF Exh. G”), at 95:10-25.)

1           **PSOF 67 RESPONSE:** Because the Two Remaining Claims are limited to and  
2 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
3 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
4 move to strike paragraph 67 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
5 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
6 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Subject to and without waiving Defendants’  
7 objection, to the extent the Court does not strike paragraph 67, it is undisputed.

8           **PSOF 68 RESPONSE:** Because the Two Remaining Claims are limited to and  
9 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
10 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
11 move to strike paragraph 68 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
12 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
13 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Defendants further object and move to strike on  
14 the grounds that the cited testimony does not support the purported “material fact” set  
15 forth in paragraph 68. Subject to and without waiving Defendants’ objection, to the  
16 extent that the Court does not strike paragraph 68, it is undisputed that Mr. Coffey  
17 explored the possibility of recapturing the surplus assets in the Signal employee benefits  
18 plans, which possibility then evolved into several different alternatives. (Coffey Dep.,  
19 PSOF Exh. G, at 97:21-99:24.) The asset surplus was never actually reverted to the  
20 company. (*See, e.g.*, PSOF ¶ 69, DR-PSOF ¶ 69.)

21           **PSOF 69 RESPONSE:** Because the Two Remaining Claims are limited to and  
22 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
23 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
24 move to strike paragraph 69 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
25 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
26 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Defendants further object and move to strike to  
27 the extent that there is no “Exh. ‘8’” to Plaintiffs’ Separate Statement of Facts and that  
28 there is no record support for the proposition that “Signal abandoned its plan to revert



1 surplus assets to itself . . . because it meant companies were not using plan assets solely  
2 for the benefit of plan participants.”

3 Subject to and without waiving Defendants’ objection, to the extent the Court  
4 does not strike paragraph 69, it is disputed to the extent that Plaintiffs failed to include  
5 falling annuity purchase rates and the positive implications for plan participants that  
6 would result from a merger with the Garrett Retirement Plan, which also factored in to  
7 Signal’s decision not to proceed with the so-called “termination/reversion” plans. (*See*,  
8 *e.g.*, Coffey Dep., PSOF Exh. G, at 204:11-23, 207:12-213:13; PSOF Exh. G at Ex.  
9 602.)

10 **PSOF 70 RESPONSE:** Paragraph 70 is undisputed. (*See* DSOF ¶¶ 25-26.)

11 **PSOF 71 RESPONSE:** Because the Two Remaining Claims are limited to and  
12 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
13 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
14 move to strike paragraph 71 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
15 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
16 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Subject to and without waiving Defendants’  
17 objection, to the extent the Court does not strike paragraph 71, it is disputed to the extent  
18 that Mr. Coffey’s cited deposition testimony does not support the proposition that “the  
19 Plan sponsor has never had to put any money into the Plan,” and as Mr. Covert explained  
20 in his cited deposition testimony: “I joined the company in 1998. There have been no  
21 required minimum contributions since that time, but I can’t speak to between 1984, I  
22 believe your question was, and 1998.” (*See* Coffey Dep., PSOF Exh. G, at 29:18-30:1;  
23 *see also* Covert Dep., PSOF Exh. A, at 102:2-10.)

24 **PSOF 72 RESPONSE:** Because the Two Remaining Claims are limited to and  
25 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
26 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
27 move to strike paragraph 72 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
28 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*

1 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Defendants further object and move to strike on  
2 the grounds that Plaintiffs have not provided the deposition testimony purportedly  
3 authenticating “Exh. 19.”

4 Subject to and without waiving Defendants’ objection, to the extent the Court  
5 does not strike paragraph 72, it is disputed to the extent that Plaintiffs selectively quote  
6 from the document. For example, the full statement Plaintiffs’ selectively quote first  
7 reads: “The projection to age 65 using a 7.5% interest assumption *on earnings in excess*  
8 *of 3.5% on the basic account* is a sharing of benefit improvements between the  
9 company and the employee and the projection to age 65 using a 7.5% interest  
10 assumption on the excess assets balance is also a sharing of benefit improvement  
11 between the company and employee.” (McLeod Dep., PSOF Exh. H, at Exh. 19 at  
12 HW0041574-41575 (emphasis added).) In two sentences following that statement, Mr.  
13 McLeod explained that: “Using the 3.5% (153.31 factor) offset is a maintenance of what  
14 our employees had with the old Severance Plan. *What this all means is that retiring*  
15 *employees will have a larger amount of cash at their disposal if they so desire.*” (*Id.* at  
16 HW0041575 (emphasis added).) The full statement Plaintiffs selectively cite second  
17 reads: “Bill Coffey has informed me that our actuaries have estimated that for each \$1.00  
18 of surplus SBA balance: between 40 cents and 50 cents will benefit the Company, and  
19 between 50 cents and 60 cents will benefit the employee.” (*Id.* at HW0041575.) Mr.  
20 McLeod elsewhere explained that in calculating the SBA offset, “we tried to achieve  
21 three dis[tinct] goals. One, maintain our employees [*sic*] vested and ongoing benefit  
22 derived from the basic balance at 12/31/83; two, increase our employees [*sic*] future  
23 benefit from the allocation of excess assets; and three, achieve some amount of financial  
24 benefit for the corporation.” (*Id.* at HW0041574.) Mr. McLeod summarized that the  
25 new offset calculation methodology “actually improved the employees [*sic*] benefit.”  
26 (*Id.* at HW0041576.) Moreover, Mr. McLeod confirmed that “the benefits and the  
27 overall features of the new Signal Plan would be equal to or exceed the former Garrett  
28 Plan.” (*See* DSOF ¶ 62.)

1           **PSOF 73 RESPONSE:** Because the Two Remaining Claims are limited to and  
 2 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 3 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 4 move to strike paragraph 73 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 5 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 6 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Subject to and without waiving Defendants’  
 7 objection, to the extent the Court does not strike paragraph 73, it is undisputed that this  
 8 was Mr. Donovan’s testimony.

9           **PSOF 74 RESPONSE:** Paragraph 74 is disputed in part. The deposition cited  
 10 does not support Plaintiffs’ assertion in paragraph 74. That in late 1983, as the cited  
 11 deposition testimony explains, Tom Donovan advised 15 Garrett employees that the  
 12 Signal Plan changes enhanced their benefits and suggested they put off retirement until  
 13 1984 is undisputed. (April 20, 2010 Deposition Transcript of Tom Donovan, attached  
 14 hereto at Tab 87 (“Donovan Dep.”), at 63:10-64:5; *see also* DSOF ¶ 63.) It is further  
 15 undisputed that, beginning in late 1983, employees were generally advised that the total  
 16 benefits and overall features of the new Signal Retirement Plan, effective January 1,  
 17 1984, were better than or equal to the benefits and overall features of the Garrett  
 18 Retirement Plan. (*See, e.g.*, DSOF ¶¶ 62, 64, 108.)

19           **PSOF 75 RESPONSE:** Contrary to LRCiv 56.1(a), Plaintiffs assert multiple  
 20 facts that purport to be material within paragraph 75. Defendants respond to each  
 21 purported “material fact” in turn.

22           The first two sentences of paragraph 75 are disputed in part. The cited January  
 23 1984 Garrett Retirement Brochure does not support Plaintiffs’ assertion in paragraph 75.  
 24 The Garrett Retirement brochure did not advise participants that at the time of retirement  
 25 both the Garrett Plan and Signal Plan formulas would be “continued” under the new  
 26 Signal Plan. Rather, and as the first quoted excerpt makes clear, the brochure advised  
 27 employees that their benefits would be calculated in two ways under the Signal Plan to  
 28 “ensure that [the participant] will not receive a lesser pension benefit under the new

1 Signal Plan than [the participant] would have received from the Garrett Retirement  
2 Plan.” As the example on the following page of the brochure then demonstrates, the  
3 dual calculation confirms that the participant will receive the higher benefit under the  
4 “New Signal Benefit Calculation” as opposed to the lower benefit the “Old Garrett  
5 Benefit Calculation” would have provided. (Chapman Dep., PSOF Exh. F, at Ex. 7 at  
6 HW004355.)

7 The third sentence of paragraph 75 is undisputed. (*See* DSOF ¶ 110.)

8 The fourth sentence of paragraph 75 is disputed in part. That the comparison  
9 provided as an example in the January 1984 brochure used the same numbers for final  
10 average compensation and credited service is undisputed. The fourth sentence is  
11 disputed, however, to the extent that the definition of final average compensation and  
12 credited service under the governing terms of the Signal Retirement Plan were more  
13 generous than the definitions of those terms under the Garrett Retirement Plan. (*See*  
14 DSOF ¶¶ 66, 69.) The fourth sentence is further disputed to the extent that the Signal  
15 Retirement Plan provided for a new benefit formula as compared to the formula set forth  
16 under the Garrett Retirement Plan, (*see* DSOF ¶¶ 7, 28), and that the Signal Retirement  
17 Plan included a savings clause to protect against a cutback of a participant’s accrued  
18 benefit under the Garrett Retirement Plan that required a computation of the participant’s  
19 “Accrued Benefit” as of December 31, 1983 determined under the terms of the Garrett  
20 Retirement Plan. (*See* DSOF ¶¶ 54, 58.)

21 It is undisputed that the second quotation is an excerpt from page HW004355 of  
22 Plaintiffs’ Exh. F, at Exh. 7.

23 **PSOF 76 RESPONSE:** Paragraph 76 is disputed in part. That the December 19,  
24 1983 letter is accurately quoted is undisputed. That Plaintiffs’ “Exh. 608,” a letter  
25 printed on Signal letterhead, was sent to Garrett employees is disputed. (Hon. Ex. 699,  
26 attached to DSOF at Tab 40 (schedule of communications with Garrett employees  
27 pertaining to the plan merger did not include the December 19, 1983 letter); McLeod  
28 Dep., attached hereto at Tab 93, at 26:12-27:12 (explaining that communications to

Garrett employees would go out under Garrett corporation letterhead), 43:2-10 (“This memo is not really clear if this would have gone to just the H.R. departments of the Signal Company subsidiaries. Although, it does say the employees of the Signal Companies. The last paragraph, it would be very unusual for a Garrett employee to be talking to Todd Wilburton about a retirement merger.”).) Paragraph 76 is undisputed to the extent that the Signal Retirement Plan included a savings clause to protect against a cutback of a participant’s accrued benefit under the Garrett Retirement Plan that required a computation of the participant’s “Accrued Benefit” as of December 31, 1983 determined under the terms of the Garrett Retirement Plan. (See DSOF ¶¶ 54, 58.)

**PSOF 77 RESPONSE:** Paragraph 77 is disputed in part. That Mr. McLeod testified, in his individual capacity, that this was his understanding is undisputed. That this understanding can be imputed to “Garrett” is disputed.

**PSOF 78 RESPONSE:** Paragraph 78 is undisputed. (See DSOF ¶ 62.)

**PSOF 79 RESPONSE:** Paragraph 79 is disputed in part. That a handout from the Retirement Plan Merger Orientation Meeting for Garrett benefits personnel included a side-by-side comparison of the old Garrett benefit formula and the new Signal formula is undisputed. That the presentation stated that employees will get the greater of the benefits under the Garrett Formula or the Signal Formula at the time of retirement is disputed. In referring to the use of “two formulas” to “insure that Garrett employees will not receive a lesser benefit than they would have under the Garrett Plan,” the presentation advised benefits personnel that employee benefits would be calculated in two ways *under the Signal Plan*—one being the \$20 minimum benefit formula, the other being the Social Security offset formula, as set forth in the comparison Plaintiffs set forth in paragraph 73. In its entirety the section of the presentation referred to by Plaintiffs states:

1. THE USE OF TWO FORMULAS WILL INSURE THAT GARRETT EMPLOYEES WILL NOT RECEIVE A LESSER BENEFIT THAN THEY WOULD HAVE UNDER THE GARRETT PLAN.

1           2. *GARRETT EMPLOYEES WILL RECEIVE THE GREATER OF THE TWO SIGNAL*  
2           *FORMULAS.*

3           3. BASICALLY A PROTECTION FOR THE EMPLOYEE THAT WOULD HAVE RECEIVED  
4           THE OLD \$19.50 MINIMUM BENEFIT UNDER THE GARRETT PLAN.

(Hon. Ex. 580, attached to PSOF at Exh. S, at HW0032117 (emphasis added).)

5           **PSOF 80 RESPONSE:** Paragraph 80 is undisputed.

6           **PSOF 81 RESPONSE:** Paragraph 81 is disputed in part. That in September  
7           1995 benefits administrator Jean Payne gave at least four separate presentations in  
8           Phoenix explaining the SBA offset to employees is undisputed. (*See* DSOF ¶¶ 163-185.)  
9           That Plaintiffs accurately quote from the 1995 presentation speaker notes is disputed.  
10          The correct notation in the 1995 presentation speaker notes was that “the plan has not  
11          changed.” (May 28, 2010 Deposition Transcript of Jean Payne, attached to PSOF at  
12          Exh. K (“Payne Dep., PSOF Exh. K”), at Exh. 1 at HW0023065.) As Ms. Payne  
13          explained at her deposition, which testimony Plaintiffs did not cite, the notation in the  
14          speaker notes referred to the fact that under both the Garrett and Signal Retirement  
15          Plans, there was an offset to the normal retirement benefit that accounted for the  
16          participant’s SBA if it was not transferred to the defined benefit plan. (Payne Dep.,  
17          attached hereto at Tab 97, at 67:16-69:2.)

18          That at these presentations employees were not informed of changes related to the  
19          SBA offset is disputed. At each presentation, Ms. Payne explained that the SBA offset  
20          was calculated differently depending on (1) whether an employee retired before or after  
21          December 31, 1983, and (2) whether the employee transferred his SBA balance to the  
22          Signal Retirement Plan or withdrew it. (*See* DSOF ¶ 173.) At each presentation, Ms.  
23          Payne also specifically noted the change in the projection-forward interest from 3.5% to  
24          7.5% for the “surplus” SBA balance. (*See* DSOF ¶¶ 176-177.) Ms. Payne also informed  
25          participants of the change in the projection-forward interest rate at individual and group  
26          counseling sessions. (*See* DSOF ¶¶ 148, 154.)

27          **PSOF 82 RESPONSE:** Because the Two Remaining Claims are limited to and  
28          require proof that the amendment of the Signal Retirement Plan violated ERISA §



204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike paragraph 82 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also* Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Subject to and without waiving Defendants’ objection, to the extent the Court does not strike paragraph 82, it is disputed. The cited exhibit does not support Plaintiffs’ assertion in paragraph 82. Plaintiffs “Exh. 19” does not include a page bates stamped HW0045175. According to the memo cited, both the participant and the company benefit if the participant does not transfer his funds to the Retirement Plan. (McLeod Dep., PSOF Exh. H, at Exh. 19, at HW0041574-76 (explaining that the new Secured Benefit Account offset accomplished three goals: it (1) preserved an employee’s original benefit, (2) provided the employee with an enhanced benefit, and (3) benefited the corporation financially by requiring a lesser contribution to the retirement plan trust.) Defendants incorporate herein by reference their response to paragraph 72, above.

**PSOF 83 RESPONSE:** Because the Two Remaining Claims are limited to and require proof that the amendment of the Signal Retirement Plan violated ERISA § 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike paragraph 83 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also* Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Subject to and without waiving Defendants’ objection, to the extent the Court does not strike paragraph 83, it is disputed. Plaintiffs’ assertion in paragraph 83 is vague and ambiguous, and is not supported by the exhibits cited.

None of the citations provide any support for Plaintiffs’ argument that “the Company recognized they could be worse off.”

Moreover, in each of the exhibits cited in paragraph 83, participants were informed that they *could elect to transfer* their SBA account balance to the Signal Plan. (Chapman Dep., PSOF Exh. F, at Ex. 8 at HW000435 (“17 Q. What happens if I have a

Garrett Secured Benefit Account? A. You can transfer your Garrett Secured Benefit Account (SBA) to the Retirement Plan, withdraw your SBA balance and invest it in an annuity or withdraw your SBA balance and spend it.”); *Id.* at Exh. 9 at HW0001214 (“You can transfer your Allied-Signal Secured Benefit Account (SBA) to the Retirement Plan, withdraw your SBA balance and invest it in an annuity, or withdraw your SBA balance and spend it, or defer distribution until a later date or elect annual installments.”); Doc. 16, Ex. G, attached hereto at Tab 72 (“Garrett Brochure”), at HW0000426 (“Again, as has been the case with the Garrett Severance and Retirement Plans, the participant may elect to transfer the Garrett Secured Benefit Account Balance to the new Signal Retirement Plan and receive the maximum benefit accrued under the Retirement Plan.”).) The cited exhibits also confirm that participants were told: “If you don’t make this transfer, your Normal Retirement benefit will be somewhat reduced.” (Chapman Dep., PSOF Exh. F, at Exh. 8 at HW000435; *Id.* at Exh. 9 at HW0001215; *see also* Garrett Brochure, attached hereto at Tab 72, at HW0000426 (“The participant may elect to withdraw part or all of the Secured Benefit Account Balance. The amount withdrawn will reduce the monthly benefit payable from the Retirement Plan...”)).)

Finally, the deposition testimony Plaintiffs cite in paragraph 83 does not indicate that participants were advised *not* to transfer their SBA accounts to the Signal Plan. (May 26, 2010 Deposition Transcript of Craig Chapman, attached hereto at Tab 95 (“Chapman Dep.”), at 117:20-118:20 (explaining that the May 1984 SPD’s statement that “. . . if you withdraw your SBA in cash and invest it in annuity, you can more than make up for the reduction” was merely “providing information to [employees] that was true at that point in time.”).)

**PSOF 84 RESPONSE:** Because the Two Remaining Claims are limited to and require proof that the amendment of the Signal Retirement Plan violated ERISA § 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike paragraph 84 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*

1 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Subject to and without waiving Defendants'  
2 objection, to the extent the Court does not strike paragraph 84, it is disputed.

3 Defendants incorporate herein by reference their response to paragraph 83, above.  
4 Defendants further dispute paragraph 84 to the extent that employees were informed that  
5 *under certain circumstances* it was more advantageous to withdraw their accounts than  
6 to transfer them to the Retirement Plan. (*See, e.g.*, (Chapman Dep., PSOF Exh. F, at  
7 Exh. 8 at HW000435; *Id.* at Exh. 9 at HW0001215; *see also* Garrett Brochure, attached  
8 hereto at Tab 72, at HW0000426 (introducing the options a participant has with respect  
9 to his SBA by noting “Let’s look at the choices available and their effect on a retiring  
10 employee. When a participant retires, he or she will have the following choices with  
11 regard to his or her new Garrett [SBA].”).)

12 Defendants further dispute paragraph 84 because they *did not* recognize that  
13 employees “may be worse off financially by withdrawing the SBA because of the  
14 increased SBA offset.” For example, the exhibit Plaintiffs cite in paragraph 84  
15 demonstrates that, in early 1984, actuary Loong Kong told David Gordon that, according  
16 to his calculations, under certain hypothetical circumstances (*i.e.*, using a **9.5% interest**  
17 **rate**), “as years go by and the new portion [the portion of the SBA compounded at 7.5%]  
18 comes to predominate the account, we *could* reach a stage where from 55-58 you are  
19 worse off withdrawing the entire amount rather than leaving it in.” (McLeod Dep.,  
20 PSOF Exh. H, at Exh. 14 at HW0062075-76 (emphasis added).)<sup>4</sup> In a subsequent letter,  
21 Mr. Gordon noted that a *different conclusion would likely be reached if the*  
22 *calculations were run using the current interest rate of 12.5%, rather than the 9.5%*  
23 *applied by Kong.* (*See id.*)

24 **PSOF 85 RESPONSE:** Because the Two Remaining Claims are limited to and  
25 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
26

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27 <sup>4</sup> Defendants maintain their position that this document is privileged. Defendants do not  
28 waive their objection to the compelled production of this document by disputing its  
meaning in response to Plaintiffs’ assertions regarding the document.

204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike paragraph 85 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also* Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Plaintiffs have settled and released any and all claims relating to early retirement benefits under the Garrett, Signal, and/or successor Plans. (*See* DSAF ¶¶ 59-70, 83-87; *see also* PSA Motion at Section III.C.) Defendants also object and move to strike pursuant to LRCiv 7.2(m) and LRCiv 56.1(a) paragraph 85, because it fails to “refer to a specific admissible portion of the record where the fact finds support.” The cited deposition testimony does not support Plaintiffs’ argument that “that Defendants did not know early retirement benefits were protected by ERISA § 204(g) when the Plan was amended, admitted that the February 1985 Plan made no specific provision to protect them.”

Subject to and without waiving its objection, to the extent the Court does not strike paragraph 85, it is disputed. In deposition testimony previously cited by Plaintiffs, Mr. Covert explained that he did not join Honeywell until 1998, such that he could not speak to the events at the company from 1984 through 1998. (Covert Dep., PSOF Exh. A, at 102:2-10; *see also* DR-PSOF ¶ 71.) Mr. Covert further explained that the Signal Retirement Plan protected “Accrued Benefits,” (*Id.* at 78:25-79:24), and Mr. Denlinger applied the early commencement factors in effect under the Garrett Retirement Plan as of 12/31/83 in calculating participants’ Garrett accrued benefit. (Jul. 14 2010 Denlinger Dep., attached hereto at Tab 99, at 128:8-131:23; *see also* DSOF ¶¶ 51-58.)

The Court has already explained that “ERISA’s anti-cutback rule . . . applies to accrued early retirement benefits, retirement-type subsidies, and optional forms of benefits,” and that “§1054(g)(2) does not single out early retirement benefits for special treatment; rather, it provides that they shall be protected to the same extent as other benefits.” (*Allen*, 382 F. Supp. 2d at 1149-50, 1156.). The Signal Plan, as amended and restated effective January 1, 1984, protected early retirement benefits. (*See* DSOF ¶¶ 51-58; *see also* Opp. Brief at Section II.A.1(iv).)

1           **PSOF 86 RESPONSE:** Paragraph 86 is undisputed to the extent that Plaintiffs  
 2 have, with the exception of immaterial typographical errors, correctly cited to Mr.  
 3 Denlinger's explanation that the administrative calculation error, which resulted in 115  
 4 participants being paid or scheduled to have been paid less than their Garrett accrued  
 5 benefit because of a misapplication of the Signal Retirement Plan's savings clause, was  
 6 due to a comparison of the Garrett accrued benefit to the benefit under the Signal  
 7 Retirement Plan on a gross basis as opposed to a net basis (*i.e.*, with the SBA offset).  
 8 (*See* DSOF ¶¶ 80-84; *see also* DR-PSOF ¶ 75.) Paragraph 86 is disputed to the extent  
 9 that a participant who retired under the Garrett Retirement Plan prior to December 31,  
 10 1983 had his or her net benefit, with the SBA Offset, calculated under the Garrett  
 11 Retirement Plan. (*See* DSOF ¶¶ 4-6, 9-11.)

12           **PSOF 87 RESPONSE:** Paragraph 87 is disputed. Exhibit A to Mr. Denlinger's  
 13 July 2010 Declaration contains a list of 42 plan participants for whom Johnson &  
 14 Higgins, the Garrett Plan actuary, computed the Garrett accrued benefit. (Jul. 14 2010  
 15 Denlinger Dep., attached hereto at Tab 99, at 82:6-84:15.) Mr. Denlinger further  
 16 explained in his July 2010 Declaration, and as Plaintiffs have presented in paragraph 86  
 17 of their SOF, the administrative calculation error was in part the result of the fact that  
 18 there was "a plan-wide calculation of the Garrett Plan accrued benefit at the gross level  
 19 for all participants as of December 31, 1983. . . . Because, as noted, the Signal Plan gross  
 20 benefit was better than the Garrett Plan gross benefit, it appears it was determined that  
 21 there was no need to continue to do this Signal Plan to Garrett Plan comparison once the  
 22 initial calculations confirmed this fact." Finally, in the deposition testimony Plaintiffs'  
 23 cite in paragraph 87, Mr. Denlinger only testified, in response to questions from  
 24 Plaintiffs' counsel, that he was unaware that *Hewitt* had performed a *systematic*  
 25 *comparison* of "the Garrett employees 12/31/83 benefits performed at the time of  
 26 retirement" from 1984 to 2000. (July 14, 2010 Deposition Transcript of Kurt Denlinger,  
 27 attached to PSOF at Exh. U ("Denlinger Dep., PSOF Exh. U"), at 93:15-94:4.) Mr.  
 28 Denlinger further explained that "there was not a failure to calculate the accrued benefit.

1 It was done. The benefit was calculated, as I've stated here in my record. And the  
 2 comparison was done to a point where, in my belief, they were satisfied that the gross  
 3 comparison was the right comparison." (Denlinger Dep., PSOF Exh. U, at 97:14-20.)  
 4 Defendants incorporate herein by reference their response to paragraph 86, above.

5 Paragraph 87 is further disputed to the extent that the cited paragraph from Mr.  
 6 Altman's report does not support the "material fact" Plaintiffs purport to present in  
 7 paragraph 87. Mr. Altman's cited paragraph 16 is also contradicted by the testimony of  
 8 another one of Plaintiffs' rebuttal experts, James Holland. (*See* DSOF ¶ 84; *see also*  
 9 PSOF ¶ 50.)

10 **PSOF 88 RESPONSE:** Because the Two Remaining Claims are limited to and  
 11 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 12 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 13 move to strike paragraph 88 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 14 a "material fact" that is relevant to resolution of the Two Remaining Claims. (*See also*  
 15 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Any claim by Plaintiffs relating to an alleged  
 16 failure by the plan administrator to timely respond to requests for documents has been  
 17 settled and released. *See, e.g., Allen*, 382 F. Supp. 2d at 1167-69 (ruling on whether  
 18 Plaintiffs had stated a valid claim for relief on such a claim); *see also* DSAF ¶¶ 59-70;  
 19 PSA Motion at Sections II & III.)

20 Subject to and without waiving Defendants' objection, to the extent the Court  
 21 does not strike paragraph 88, it is disputed. As Mr. Denlinger testified in the cited  
 22 deposition testimony, when the participants filed their administrative claim, Mr.  
 23 Denlinger had tables that appeared to be "Exhibit B," they simply were not labeled as  
 24 such. Defendants were also able to locate the formal Exhibit B. (May 11, 2010  
 25 Deposition Transcript of Richard Shea, attached hereto at Tab 90 ("Shea Dep."), at  
 26 17:14-20.) Mr. O'Neill's cited deposition testimony relates where and when the  
 27 document labeled as "Exhibit B" was found.  
 28



1           **PSOF 89 RESPONSE:** Defendants incorporate herein by reference their  
 2 response to paragraph 88, above. Subject to and without waiving its objection, to the  
 3 extent the Court does not strike paragraph 89, it is disputed. In addition to the reasons  
 4 set forth in their response to paragraph 88, above, Defendants dispute paragraph 89  
 5 because the cited exhibit does not support Plaintiffs' argument that "Defendants' Plan  
 6 actuary did not know how to calculate the Garrett accrued benefits after the claims were  
 7 submitted." Moreover, Mr. Denlinger, the Defendants' Plan actuary, did know how to  
 8 calculate the Garrett accrued benefit. (*See, e.g.*, DSOF ¶ 58.) Mr. Denlinger further  
 9 explained his calculation of the Garrett accrued benefit at his deposition, which  
 10 calculation included using the early commencement factors in effect under the Garrett  
 11 Retirement Plan as of 12/31/83 and applying them at the date of commencement. (Jul.  
 12 14 2010 Denlinger Dep., attached hereto at Tab 99, at 128:8-131:23.)

13           **PSOF 90 RESPONSE:** Because the Two Remaining Claims are limited to and  
 14 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 15 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 16 move to strike paragraph 90 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 17 a "material fact" that is relevant to resolution of the Two Remaining Claims. (*See also*  
 18 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Subject to and without waiving their objection, to  
 19 the extent the Court does not strike paragraph 90, it is undisputed that there was an  
 20 operational error, which resulted in 115 participants being paid or scheduled to have  
 21 been paid less than their Garrett accrued benefit because of a misapplication of the  
 22 Signal Retirement Plan's savings clause, based on a comparison of the Garrett accrued  
 23 benefit to the benefit under the Signal Retirement Plan on a gross basis as opposed to a  
 24 net basis (*i.e.*, with the SBA offset). (*See* DSOF ¶¶ 80-84; *see also* DR-PSOF ¶ 75.)

25           **PSOF 91 RESPONSE:** Defendants incorporate herein by reference their  
 26 responses to paragraphs 86-87 and 90, above. Defendants dispute paragraph 91 to the  
 27 extent that Mr. Poulin's cited paragraph does not support the "material fact" Plaintiffs  
 28 purport to set forth in paragraph 91. "Mr. Poulin admitted that over the six-year course

1 of this litigation that he had looked at only 50 benefit files out of the thousands provided,  
2 and he does not recall whether he looked at any benefit statements for those retiring in  
3 January or February 1984, when it would have been most likely that this calculation  
4 would have to be done. In fact, . . . the actuary for the Garrett Plan, Johnson & Higgins,  
5 performed this calculation for participants who retired shortly after the merger of the  
6 Garrett Plan into the Signal Plan. . . . In addition, a plan-wide calculation of the gross  
7 accrued benefit under the Garrett Plan for all participants as of December 31, 1983, was  
8 calculated and communicated to participants as part of the 1983 benefits statements  
9 provided to participants in mid-1984.” (Jul. 2010 Denlinger Decl., DSOF Tab 8, at ¶ 15  
10 (internal citation omitted); *see also* Jun. 2010 Poulin Dep., attached hereto at Tab 98, at  
11 443:5-16.)

12 **PSOF 92 RESPONSE:** Because the Two Remaining Claims are limited to and  
13 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
14 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
15 move to strike paragraph 92 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
16 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
17 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Subject to and without waiving their objection, to  
18 the extent the Court does not strike paragraph 92, it is disputed. Ms. Mathis did refer to  
19 section 4.10(c)(ii) of the Signal Retirement Plan in her January 24, 2003 letter, as Ms.  
20 Mathis made clear both in the letter itself and at her deposition. As stated in that letter:  
21 “For Garrett employees, the 1985 Signal Retirement Plan retained the benefits accrued  
22 under the prior Garrett Retirement Plan, including the offset for Secured Benefit  
23 Account assets.” (Doc. 16, Ex. K, attached hereto at Tab 75, at HW0000465.) As  
24 further stated in the letter: “Because participants’ accrued benefits did not decrease as a  
25 result of the modification to the projected interest rate, the modification to the offset  
26 formula did not violate the anti-cutback rule.” (*Id.* at HW0000467.) Ms. Mathis  
27 explained at her deposition that the plan provision she was relying on in making that  
28 statement was the Signal Retirement Plan’s “provision that says a participant’s protected

1 accrued benefit is never less than the benefit earned under the predecessor plan through  
 2 the date that that predecessor plan was in operation” (May 14, 2010 Deposition  
 3 Transcript of Kathleen Mathis Dep., attached hereto at Tab 92 (“May 14 Mathis Dep.”),  
 4 at 41:11-42:13)—in other words, the savings clause provision. (*See* DSOF ¶¶ 51-57.)  
 5 Ms. Mathis also explained at her deposition that she may not have always cited a specific  
 6 plan provision that she relied on in the January 24, 2003 letter. (May 14 Mathis Dep.,  
 7 attached hereto at Tab 92, at 44:1-13.) In denying Plaintiffs’ administrative appeal on all  
 8 but one claim, Mr. Marcotte did specifically cite to section 4.10(c)(ii). (*See* DSOF ¶  
 9 214.)

10 **PSOF 93 RESPONSE:** Because the Two Remaining Claims are limited to and  
 11 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 12 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 13 move to strike paragraph 93 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 14 a “material fact” that is relevant to resolution of the Two Remaining Claims, and as  
 15 setting forth multiple “facts” that purport to be “material.” (*See also* Fed. R. Civ. P. 56;  
 16 Fed. R. Evid. 402.) The issue of whether the application of the rehire provisions was a  
 17 cutback is not relevant to the Two Remaining Claims and has been released. (*See* DSAF  
 18 ¶¶ 59-70; *see also* PSA Motion at Sections II & III.)

19 Subject to and without waiving their objection, to the extent the Court does not  
 20 strike paragraph 93, it is disputed. The “Exh. 14” Plaintiffs have supplied was not  
 21 introduced at the May 14, 2010 Deposition of Kathleen Mathis, the cover and certificate  
 22 pages of which Plaintiffs have provided at “Exh. W.” Moreover, when Plaintiffs  
 23 attempted to introduce “Exh. 14” at Ms. Mathis’ May 27, 2010 deposition, Ms. Mathis  
 24 was unable to authenticate the document and could not recall any piece of information  
 25 set forth therein. (May 27, 2010 Deposition Transcript of Kathleen Mathis, attached  
 26 hereto at Tab 96 (“May 27 Mathis Dep.”), at 34:10-41:14.) The cited “Exh. 11” from  
 27 Mr. Denlinger’s deposition contains a list of the 180 people who had an SBA account,  
 28 took a distribution and were rehired. (July 15, 2010 Deposition Transcript of Kurt

1 Denlinger, attached hereto at Tab 100 (“Jul. 15 2010 Denlinger Dep.”), at 91:1-8; 95:19-  
2 96:6.)

3 **PSOF 94 RESPONSE:** Defendants incorporate herein by reference their  
4 response to paragraph 93. Mr. Amend is not one of the 260 participants that Plaintiffs  
5 have calculated as receiving lesser benefits under the Signal Retirement Plan at actual  
6 retirement as compared to his accrued benefit under the Garrett Retirement Plan. (*See*  
7 *DSOF* ¶ 78 at n.7.) Subject to and without waiving their objection, to the extent the  
8 court does not strike paragraph 94, it is undisputed that Mr. Amend’s “Garrett Plan  
9 Benefit” is listed as \$69 in the “Actives” tab at Column AW of the cited calculation file.  
10 Defendants dispute that Plaintiffs have correctly calculated that amount. (Jul. 2010  
11 Denlinger Decl., *DSOF* Tab 8, at ¶¶ 10, 22.)

12 **PSOF 95 RESPONSE:** Defendants incorporate herein by reference their  
13 response to paragraph 93. Mr. Amend is not one of the 260 participants that Plaintiffs  
14 have calculated as receiving lesser benefits under the Signal Retirement Plan at actual  
15 retirement as compared to his accrued benefit under the Garrett Retirement Plan. (*See*  
16 *DSOF* ¶ 78 at n.7.) Subject to and without waiving their objection, to the extent the  
17 court does not strike paragraph 95, it is undisputed.

18 **PSOF 96 RESPONSE:** Defendants incorporate herein by reference their  
19 response to paragraph 93. Mr. Amend is not one of the 260 participants that Plaintiffs  
20 have calculated as receiving lesser benefits under the Signal Retirement Plan at actual  
21 retirement as compared to his accrued benefit under the Garrett Retirement Plan. (*See*  
22 *DSOF* ¶ 78 at n.7.) Subject to and without waiving their objection, to the extent the  
23 court does not strike paragraph 96, it is undisputed.

24 **PSOF 97 RESPONSE:** Defendants incorporate herein by reference their  
25 responses to paragraphs 86 and 93. Mr. Amend is not one of the 260 participants that  
26 Plaintiffs have calculated as receiving lesser benefits under the Signal Retirement Plan at  
27 actual retirement as compared to his accrued benefit under the Garrett Retirement Plan.  
28 (*See DSOF* ¶ 78 at n.7.) Subject to and without waiving their objection, to the extent the

1 court does not strike paragraph 97, it is disputed. Defendants' dispute Plaintiffs'  
2 characterization of the savings clause as "purported." The Signal Retirement Plan did  
3 contain savings-clause protections, and it has been administered consistent with that  
4 interpretation. (See DSOF ¶¶ 47-48, 51-58, 214.) "Mention" of that savings-clause  
5 protection was made in, for example, the January 1984 brochure's dual-calculation  
6 provisions that Plaintiffs have elsewhere referenced. (See, e.g., DR-PSOF ¶ 75.) That  
7 brochure was distributed in or around mid January of 1984 to all employees, which  
8 would have included Mr. Amend. (See DSOF ¶ 108.) Having withdrawn his SBA in or  
9 around May 1993, Mr. Amend was able to enjoy those funds for many years, and could  
10 have invested that money at rates comparable to the 12.3% rates the SBA was invested  
11 in under the Signal Retirement Plan. (See, e.g., Jun. 2010 Poulin Dep., attached hereto at  
12 Tab 98, at 502:3-503:1.)

13 **PSOF 98 RESPONSE:** Defendants incorporate herein by reference their  
14 responses to paragraphs 86 and 93. Mr. Amend is not one of the 260 participants that  
15 Plaintiffs have calculated as receiving lesser benefits under the Signal Retirement Plan at  
16 actual retirement as compared to his accrued benefit under the Garrett Retirement Plan.  
17 (See DSOF ¶ 78 at n.7.) Subject to and without waiving their objection, to the extent the  
18 court does not strike paragraph 98, it is undisputed.

19 **PSOF 99 RESPONSE:** Defendants object and move to strike pursuant to LRCiv  
20 7.2(m) and 56.1(a) paragraph 99 as failing to state a "material fact" and instead making a  
21 legal argument unsuccessfully disguised as an "actuarial practice." Subject to and  
22 without waiving its objection, to the extent the Court does not strike paragraph 99, it is  
23 disputed.

24 Mr. Holland's cited paragraph 31 does not refer to any authority for the  
25 proposition that Plaintiffs' legal argument that an accrued benefit can be "calculated . . .  
26 at any point in time." To the contrary, Mr. Holland acknowledged that he was aware of  
27 no authority on "[h]ow you calculate protected accrued benefits in the floor offset  
28 situation." (August 3, 2010 Deposition Transcript of James Holland, attached hereto at

1 Tab 101 (“Holland Dep.”), at 156:3-14.) The only authorities Messrs. Poulin and  
 2 Altman identified to support Plaintiffs’ legal argument are (1) a Q&A from the 2005  
 3 ASPPA Pension Actuaries and Consultants Annual Conference; and (2) Question 9 from  
 4 the 2001 PBGC Blue Book. (Jul. 2010 Poulin Decl., PSOF Exh. O, at ¶ 6; July 23, 2010  
 5 Rebuttal Report of James Holland, attached to PSOF at Exh. E (“Holland Rebuttal  
 6 Report, PSOF Exh. E”), at ¶ 8.) As the ASPPA Q&A itself makes clear, however, it is  
 7 not binding authority:

8       The purpose of the meeting and calls was to provide the IRS officials with  
 9 questions which were submitted by members of ASPPA. It is intended  
 10 that the responses or deferrals to the questions provide the basis for  
 11 discussion at the 2005 Pension Actuaries and Consultants Conference  
 12 during the IRS Question and Answer session. ***The answers reflected in***  
 13 ***this presentation are the ASPPA representatives’ interpretation of the***  
 14 ***IRS officials [sic] responses, and not direct quotes.*** They are intended to  
 15 reflect as accurately as possible the statements made by the government  
 16 representatives. ***This material does not represent the official position of***  
 17 ***the Internal Revenue Service, the Treasury Department, or any other***  
 18 ***government agency, nor has it been reviewed or approved by the Service***  
 19 ***or Treasury.***

20 (Jul. 2010 Poulin Decl., PSOF Exh. O, at Exh. 3 (emphasis added).) Mr. Holland was  
 21 one of the presenters at the 2005 ASPPA meeting, and he did not cite the Q&A in his  
 22 report because it is not “official guidance” of the Internal Revenue Service. (Holland  
 23 Dep., attached hereto at Tab 101, at 188:6-18.) Mr. Holland further noted that he would  
 24 not cite the Q&A as “authority for anything. They can get it wrong and there’s, I would  
 25 not rely on those kinds of statements for this kind of report.” (*Id.* at 190:10-191:1.) Mr.  
 26 Altman also acknowledged that the PBGC “has no authority over the 411(d)(6) [anti-  
 27 cutback] rules or regulations.” (Altman Dep., attached hereto at Tab 102, at 212:18-  
 28 213:4.) The PBGC Blue Book also contains a disclaimer similar to the one from the  
 ASPPA Q&A:

29       ***[The government representatives’] responses*** are merely the current views  
 30 of the individuals and do not represent the position of the Pension Benefit  
 31 Guarantee Corporation or any other governmental agency, and ***cannot be***  
 32 ***relied upon by any person for any purpose. Moreover, the PBGC has not***  
 33 ***in any way approved this booklet or reviewed it to determine whether the***  
 34 ***statements herein are accurate or complete.***



1 (*Id.* at 214:4-215:6 (emphasis added).)

2 Defendants contend that the proper calculation of an accrued benefit in a floor-  
 3 offset arrangement requires adherence to (1) the definition of “accrued benefit” in both a  
 4 defined benefit plan and a defined contribution plan, as set forth in ERISA; and (2) the  
 5 terms of the governing plan. While the gross benefit may be calculated on the day of the  
 6 plan amendment, the offset under the defined contribution plan, by statutory definition,  
 7 can move up or down until the day it is withdrawn or the employee terminates  
 8 employment. Here, then, a participant’s accrued benefit under the Garrett Retirement  
 9 Plan cannot be determined until the participant’s date of termination, as that is the first  
 10 day on which the participant’s SBA Offset, if any, can be calculated. (*See* Doc. 676  
 11 (Defendant’s Motion for Summary Judgment on All Remaining Claims) at 13-14; *see*  
 12 *also Allen* 382 F. Supp. 2d at 1151; Opp. Brief at Section II.B.2.)

13 **PSOF 100 RESPONSE:** Defendants incorporate herein by reference their  
 14 response to paragraph 99, above. Subject to and without waiving their objection, to the  
 15 extent the Court does not strike paragraph 100, it is disputed. In addition to the reasons  
 16 set forth in Defendants’ response to paragraph 99, Mr. Holland’s cited paragraph does  
 17 not support the “material fact” Plaintiffs purport to assert. If the Court does consider Mr.  
 18 Holland’s cited paragraph 17 in this context, Defendants dispute that a hypothetical  
 19 termination analysis is an appropriate alternative to Plaintiffs’ flawed “freeze theory” for  
 20 calculating an accrued benefit on any given “determination date.” (*See* DSOF ¶¶ 85-88;  
 21 Doc. 676 at 12-13; *Allen*, 382 F. Supp. 2d at 1151 (“A participant’s ‘annual benefit  
 22 commencing at normal retirement age,’ . . . can mean nothing other than the *dollar*  
 23 *amount* of the annuity at retirement-i.e., the product of the plan’s benefit formula. That  
 24 is what the participant receives and what he is concerned with when he retains normal  
 25 retirement age-money[.]”) (emphasis in original); *see also* Opp. Brief at Section  
 26 II.B.2.).)

27 **PSOF 101 RESPONSE:** Because the Two Remaining Claims are limited to and  
 28 require proof that the amendment of the Signal Retirement Plan violated ERISA §

204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike paragraph 101 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also* Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Subject to and without waiving their objection, to the extent the Court does not strike paragraph 101, it is disputed. Mr. Denlinger has explained that the “December 31, 1983 Garrett Plan accrued benefit is properly calculated using (i) pay and service as of December 31, 1983 and (ii) the SBA balance as of the date of termination, projected to Normal Retirement Date using the Garrett Plan’s projection methodology—1.75% compounded semiannually. (*See* Garrett Plan, attached hereto at Tab 68, at § 4.1(c); Jul. Denlinger Decl., DSOF Tab 8, at ¶ 10; *see also* DSOF ¶ 58.) In the cited deposition testimony, Mr. Denlinger explained that before February 5, 2003, when he wrote the email reflected in “Exh. 6,” he “wasn’t in the practice of calculating accrued benefits for floor offset plans, hence” the questions he raised in “Exh. 6.” (Denlinger Dep., PSOF Exh. U, at 127:4-13; 128:2-7 (“we were used to calculating accrued benefits, assuming a pay and service, which were the only two elements that we needed to worry about, were frozen on the termination date -- or frozen as if it were a termination date.”).) Mr. Denlinger went on to explain that “assuming the employee terminations on the calculation date was clearly shorthand[.]” (Denlinger Dep., PSOF Exh. U, at 127:14-16.)

**PSOF 102 RESPONSE:** Because the Two Remaining Claims are limited to and require proof that the amendment of the Signal Retirement Plan violated ERISA § 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike paragraph 102 pursuant to LRCiv 7.2(m) and 56.1(a) as setting forth legal argument and failing to set forth a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also* Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Whether a plan amendment violates ERISA is a question for the Court to decide, and Mr. Denlinger’s “understanding, as an actuary” is irrelevant to that inquiry. Paragraph 102 is irrelevant because the amendments to the Signal Retirement Plan effective January 1,

1 1984 did not cutback the accrued benefit of a single plan participant. Doc. 676 at 2-12.  
2 Subject to and without waiving their objection, to the extent the Court does not strike  
3 paragraph 102, it is disputed. (*See* Opp. Brief at Sections II.D & E.)

4 **PSOF 103 RESPONSE:** In response to paragraph 103, Defendants incorporate  
5 herein by reference their responses to paragraphs 99 and 100, above. Defendants further  
6 object and move to strike paragraph 103 pursuant to LRCiv 7.2(m) and 56.1(a) as failing  
7 to set forth a “material fact” that is relevant to resolution of the Two Remaining Claims  
8 because those claims are limited to and require proof that the amendment of the Signal  
9 Retirement Plan violated ERISA § 204(g) in one of two precisely defined ways. (*See*  
10 DSAF ¶¶ 98-101; *see also* PSA Motion at Section III.E.)

11 **PSOF 104 RESPONSE:** Defendants incorporate herein by reference their  
12 responses to paragraphs 99 and 100, above. Subject to and without waiving their  
13 objection, to the extent the Court does not strike paragraph 104, it is disputed in addition  
14 to the reasons set forth in Defendants’ response to paragraphs 99 and 100 because there  
15 is no “Rebuttal Report of Holland” provided at “Exh. O.” Moreover, by Plaintiffs’ own  
16 calculations, only 260 of the approximately 13,000 participants they considered when  
17 doing their calculations received an actual benefit at retirement that was purportedly less  
18 than their Garrett accrued benefit, none of which included a named Plaintiff. (*See* DSOF  
19 ¶¶ 76, 78.) By that same calculation, approximately 98% of the class received benefits  
20 under the Signal Retirement Plan at their actual date of retirement that were greater than  
21 their accrued benefit as of December 31, 1983 under the Garrett Retirement Plan. (*See*  
22 DSOF ¶ 77.) The correct figure is not 260, but 115 (*see* DSOF ¶ 79), and benefits for  
23 those participants affected by an administrative error have already been corrected, or are  
24 in the process of being corrected. (*See* DSOF ¶¶ 80-84.) Paragraph 104 is further  
25 disputed to the extent it rests on an improper understanding of how to calculate an  
26 accrued benefit. (*See* Opp. Br. at Section II.B.)

27 **PSOF 105 RESPONSE:** Paragraph 105 is disputed to the extent that Plaintiffs’  
28 administrative claim alleged numerous violations of numerous plans, and of ERISA.

(*See, e.g.*, Doc. 16, Ex. I, attached hereto at Tab 74, at HW0000446-447; DSOF ¶¶ 208, 210.)

**PSOF 106 RESPONSE:** Paragraph 106 is undisputed. (*See* DSOF ¶¶ 209, 211.)

**PSOF 107 RESPONSE:** Paragraph 107 is undisputed. (*See* DSOF ¶ 212.)

**PSOF 108 RESPONSE:** Paragraph 108 is undisputed. (*See* DSOF ¶¶ 209, 213-215.)

**PSOF 109 RESPONSE:** Paragraph 109 is disputed to the extent that Mr. Marcotte did not merely “describe himself” as the Plan Administrator, he was the Plan Administrator at the time he signed the “administrative denial letter” dated October 29, 2003. (*See* Doc. 16, Ex. O, attached hereto at Tab 77; DSOF ¶ 209.)

**PSOF 110 RESPONSE:** Contrary to LRCiv 56.1(a), Plaintiffs assert multiple facts that purport to be material within paragraph 110. Defendants respond to each purported “material fact” in turn.

The first sentence is undisputed except as to the following: First, that Plaintiffs’ argumentative reference to the “so-called ‘fail-safe, that protects all participants, not only [*sic*][’] is improper. The Signal Retirement Plan contained a savings clause provision that prevented a cutback in the accrued benefits of employees who were merged into the Signal Retirement Plan effective January 1, 1984. (*See* DSOF¶¶ 51-58.) Mr. Marcotte referenced that provision at his deposition. (May 12, 2010 Deposition Transcript of Brian Marcotte, attached to PSOF at Exh. Z (“Marcotte Dep., PSOF Exh. Z”), at 24:24-25:5.) Second, Mr. Marcotte testified that he could not recall the actual number of sample calculations Mr. Denlinger provided, but Mr. Marcotte estimated that it was “[p]robably in the five, five to ten ballpark.” (Marcotte Dep., PSOF Exh. Z, at 21:19-22:1.)

Because the Two Remaining Claims are limited to and require proof that the amendment of the Signal Retirement Plan violated ERISA § 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike the second sentence in paragraph 110 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set

1 forth a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See*  
 2 *also* Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Subject to and without waiving its objection,  
 3 to the extent the Court does not strike the second sentence of paragraph 110, it is  
 4 disputed. Plaintiffs’ record citation does not support the “material fact” Plaintiffs  
 5 purport to present in the second sentence of paragraph 110. Mr. Marcotte testified that  
 6 he believed that “part of the comparison” was “comparing the benefits that people  
 7 received when they actually retired to the benefits they . . . had on 12/31/83. (Marcotte  
 8 Dep., PSOF Exh. Z ,at 21:8-13.) Mr. Marcotte further testified that he had the  
 9 calculations from Mr. Denlinger in front of him when they spoke (Marcotte Dep., PSOF  
 10 Exh. Z, at 21:14-18), and that Mr. Denlinger walked Mr. Marcotte “through the  
 11 calculations so that [Mr. Marcotte] had a clear understanding of the calculations. But  
 12 [Mr. Marcotte] also asked for [Mr. Denlinger’s] assurances that no Garrett participant  
 13 who were [*sic*] now in the Signal plans received an accrued benefit less than the accrued  
 14 benefit as of December 31, 1983 under the Garrett plans.” (Marcotte Dep., PSOF Exh.  
 15 Z, at 22:7-22.)

16 **PSOF 111 RESPONSE:** Contrary to LRCiv 56.1(a), Plaintiffs assert multiple  
 17 facts that purport to be material within paragraph 111. Defendants respond to each  
 18 purported “material fact” in turn.

19 Because the Two Remaining Claims are limited to and require proof that the  
 20 amendment of the Signal Retirement Plan violated ERISA § 204(g) in one of two  
 21 precisely defined ways, (*see* DSAF ¶ 65), Defendants object and move to strike  
 22 paragraph 111’s reference to the July 29, 2002 delegation of authority to Mr. Marcotte  
 23 memorialized at “Doc. 225, Exh. B, at Ex. 2” as being “the same day Plaintiffs [*sic*]  
 24 claims were received by Defendants” pursuant to LRCiv 7.2(m) and 56.1(a) as failing to  
 25 set forth a “material fact” that is relevant to resolution of the Two Remaining Claims.  
 26 (*See also* Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Subject to and without waiving its  
 27 objection, to the extent the Court does not strike that reference in paragraph 111, it is  
 28 undisputed. (*See* DSOF ¶ 209.)

1 Plaintiffs' statement that Defendants "made a delegation to Mr. Marcotte that  
2 permitted the sharing of the Company's pre-existing fiduciary responsibilities," as set  
3 forth in "Doc. 225, Exh. B, at Ex. 2," is undisputed. (*See* DSOF ¶ 209.)

4 Plaintiffs' statement that said authorization emphasized that "the authorization to  
5 act was expressly *without limitation to any previously granted authority*" is disputed.  
6 That purported quotation does not appear at the cited page, or anywhere in the cited  
7 document.

8 **PSOF 112 RESPONSE:** Because the Two Remaining Claims are limited to and  
9 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
10 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
11 move to strike paragraph 112 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
12 a "material fact" that is relevant to resolution of the Two Remaining Claims. (*See also*  
13 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Mr. Marcotte testified that he did not even recall  
14 "when [he] found out what the impact of the costs of the claims would be. . . if it was  
15 during the appeal review or after discussions once the suit was filed[.]" (May 12, 2010  
16 Deposition Transcript of Brian Marcotte, attached hereto at Tab 91 ("Marcotte Dep."), at  
17 64:7-11.) Thus, even viewing cost or liability considerations in a vacuum, paragraph  
18 112 has no bearing on Mr. Marcotte's decision of the administrative appeal.

19 Subject to and without waiving its objection, to the extent the Court does not  
20 strike that reference in paragraph 112, it is disputed. The delegation of authority to Mr.  
21 Marcotte was an actual authorization, not a "purported authorization." (*See* DSOF ¶  
22 209.) Moreover, the delegation of authority specifically gave Mr. Marcotte the authority  
23 to "administer and interpret any Pension Benefit Plan." (Doc. 225, Exh. B, at Exh. 2 at  
24 HW0012270.)

25 **PSOF 113 RESPONSE:** Because the Two Remaining Claims are limited to and  
26 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
27 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
28 move to strike paragraph 113 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth



1 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 2 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Subject to and without waiving its objection, to  
 3 the extent the Court does not strike the second sentence of paragraph 113, it is disputed.  
 4 Defendants cannot guess which portions of the 2007 Form 10-Q Plaintiffs deem  
 5 “relevant,” and “Doc. 366” is a notice of errata that Plaintiffs filed on January 8, 2007,  
 6 which does not contain an “Exh. A.” The cited deposition testimony of Mr. Marcotte  
 7 does not support the “material fact” Plaintiffs purport to assert in paragraph 113; Mr.  
 8 Marcotte simply explains that he “knew based on the basis of the claims that if the  
 9 claims were granted it would be expensive and in hundreds of millions potentially of  
 10 dollars.” (Marcotte Dep., PSOF Exh. Z, at 65:11-14.) Mr. Marcotte further testified that  
 11 he did not even recall “when [he] found out what the impact of the costs of the claims  
 12 would be. . . if it was during the appeal review or after discussions once the suit was  
 13 filed[.]” (Marcotte Dep., attached hereto at Tab 91, at 64:7-11.)

14 **PSOF 114 RESPONSE:** Because the Two Remaining Claims are limited to and  
 15 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 16 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 17 move to strike paragraph 114 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 18 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 19 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Any claim by Plaintiffs relating to an alleged  
 20 failure by the plan administrator to timely respond to requests for documents has been  
 21 settled and released. *See, e.g., Allen*, 382 F. Supp. 2d at 1167-69 (ruling on whether  
 22 Plaintiffs had stated a valid claim for relief on such a claim); *see also* DSAF ¶¶ 59-70;  
 23 PSA Motion at Sections II & III.)

24 Subject to and without waiving Defendants’ objection, to the extent the Court  
 25 does not strike paragraph 114, it is undisputed to the extent “Retirees” as used in  
 26 paragraph 114 is intended to refer to those former participants under the Garrett  
 27 Retirement Plan on whose behalf Martin & Bonnett filed the administrative claim  
 28 discussed in paragraphs 105-110, above.

1           **PSOF 115 RESPONSE:** Because the Two Remaining Claims are limited to and  
 2 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 3 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 4 move to strike paragraph 115 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 5 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 6 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Any claim by Plaintiffs relating to an alleged  
 7 failure by the plan administrator to timely respond to requests for documents has been  
 8 settled and released. *See, e.g., Allen*, 382 F. Supp. 2d at 1167-69 (ruling on whether  
 9 Plaintiffs had stated a valid claim for relief on such a claim); *see also* DSAF ¶¶ 59-70;  
 10 PSA Motion at Sections II & III.)

11           Subject to and without waiving Defendants’ objection, to the extent the Court  
 12 does not strike paragraph 115, it is undisputed that Plaintiffs’ correctly summarize Mr.  
 13 O’Neill’s letter of November 19, 2002, to the extent “the plan” Plaintiffs refer to in  
 14 paragraph 115 is the “Garrett Retirement Plan as of January 1, 1976.” Paragraph 115 is  
 15 disputed to the extent that Mr. Denlinger had tables that appeared to be “Exhibit B,” they  
 16 simply were not labeled as such. (Denlinger Dep., PSOF Exh. U, at 147:3-17.)

17           **PSOF 116 RESPONSE:** Because the Two Remaining Claims are limited to and  
 18 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 19 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 20 move to strike paragraph 116 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 21 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 22 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Any claim by Plaintiffs relating to an alleged  
 23 failure by the plan administrator to timely respond to requests for documents has been  
 24 settled and released. *See, e.g., Allen*, 382 F. Supp. 2d at 1167-69 (ruling on whether  
 25 Plaintiffs had stated a valid claim for relief on such a claim); *see also* DSAF ¶¶ 59-70;  
 26 PSA Motion at Sections II & III.)

27           Subject to and without waiving Defendants’ objection, to the extent the Court  
 28 does not strike paragraph 116, it is disputed. Mr. Denlinger had tables that appeared to

1 be “Exhibit B,” they simply were not labeled as such. (Denlinger Dep, PSOF Exh. U, at  
 2 147:3-17.) The cited deposition testimony of Mr. Shea explains that he received a  
 3 document labeled “Exhibit B” from either David Gordon, who “represented one of the  
 4 entities,” or from “the other law firm that had represented one of the companies, which  
 5 [Mr. Shea thought] was Debevoise[.]” (May 11, 2010 Deposition Transcript of Richard  
 6 Shea, attached to PSOF at Exh. BB (“May 11 Denlinger Dep., PSOF Exh. BB”), at  
 7 16:12-17:20.) The cited Rule 30(b)(6) Written Question Response simply sets forth the  
 8 date on which Defendants received a copy of a document labeled “Exhibit B.”

9 **PSOF 117 RESPONSE:** Because the Two Remaining Claims are limited to and  
 10 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 11 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 12 move to strike paragraph 117 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 13 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 14 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Plaintiffs themselves stated that the discovery of  
 15 a “document entitled Signal Retirement Plan bearing a signature page with a handwritten  
 16 notation of February 4, 1984 . . . does not alter our conclusion that the Plan raised  
 17 benefits *as of January 1, 1984* through a Plan description dated and distributed at that  
 18 time.” (Doc. 16, Ex. N, attached hereto at Tab 76, at HW0000512.) Subject to and  
 19 without waiving Defendants’ objection, to the extent the Court does not strike paragraph  
 20 117, it is disputed to the extent that Plaintiffs administrative claim letter, which pre-dated  
 21 Defendants’ decision on Plaintiffs’ administrative claim, argued that “[t]he first Signal  
 22 Retirement Plan in which Garrett employees were referenced is dated October, 1985.”  
 23 (Doc. 16, Ex. I, attached hereto at Tab 74, at HW0000449.)

24 **PSOF 118 RESPONSE:** Because the Two Remaining Claims are limited to and  
 25 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 26 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 27 move to strike paragraph 118 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 28 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*

1 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Plaintiffs themselves stated that the discovery of  
2 a “document entitled Signal Retirement Plan bearing a signature page with a handwritten  
3 notation of February 4, 1984 . . . does not alter our conclusion that the Plan raised  
4 benefits *as of January 1, 1984* through a Plan description dated and distributed at that  
5 time.” (Doc. 16, Ex. N, attached hereto at Tab 76, at HW0000512.) Subject to and  
6 without waiving Defendants’ objection, to the extent the Court does not strike paragraph  
7 118, it is disputed to the extent that the document Plaintiffs cite to in support of  
8 paragraph 118 is the appeal denial letter. Defendants advised Plaintiffs of the plan  
9 document dated February 4, 1984 on October 1, 2003, before the appeal denial letter was  
10 issued. (*Id.*)

11 **PSOF 119 RESPONSE:** Because the Two Remaining Claims are limited to and  
12 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
13 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
14 move to strike paragraph 119 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
15 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
16 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Plaintiffs themselves stated that the discovery of  
17 a “document entitled Signal Retirement Plan bearing a signature page with a handwritten  
18 notation of February 4, 1984 . . . does not alter our conclusion that the Plan raised  
19 benefits *as of January 1, 1984* through a Plan description dated and distributed at that  
20 time.” (Doc. 16, Ex. N, attached hereto at Tab 76, at HW0000512.) Subject to and  
21 without waiving Defendants’ objection, to the extent the Court does not strike paragraph  
22 119, it is undisputed.

23 **PSOF 120 RESPONSE:** Because the Two Remaining Claims are limited to and  
24 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
25 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
26 move to strike paragraph 120 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
27 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
28 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Any claim by Plaintiffs relating to an alleged

1 failure by the plan administrator to timely respond to requests for documents has been  
 2 settled and released. *See, e.g., Allen*, 382 F. Supp. 2d at 1167-69 (ruling on whether  
 3 Plaintiffs had stated a valid claim for relief on such a claim); *see also* DSAF ¶¶ 59-70;  
 4 PSA Motion at Sections II & III.)

5 Subject to and without waiving Defendants' objection, to the extent the Court  
 6 does not strike paragraph 120, it is undisputed.

7 **PSOF 121 RESPONSE:** Because the Two Remaining Claims are limited to and  
 8 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 9 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 10 move to strike paragraph 121 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth  
 11 a "material fact" that is relevant to resolution of the Two Remaining Claims. (*See also*  
 12 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Any claim by Plaintiffs relating to an alleged  
 13 failure by the plan administrator to timely respond to requests for documents has been  
 14 settled and released. *See, e.g., Allen*, 382 F. Supp. 2d at 1167-69 (ruling on whether  
 15 Plaintiffs had stated a valid claim for relief on such a claim); *see also* DSAF ¶¶ 59-70;  
 16 PSA Motion at Sections II & III.)

17 Subject to and without waiving Defendants' objection, to the extent the Court  
 18 does not strike paragraph 121, it is disputed to the extent that the cited deposition  
 19 testimony of Mr. Duff does not support the purported "material fact" set forth in  
 20 paragraph 121. Mr. Duff testified that he did not know whether "the drafts of the Signal  
 21 Retirement Plan that were being circulated in the 1984 and 1985 time frame [were]  
 22 among the documents that were furnished to Honeywell in 2007." (May 19, 2010  
 23 Deposition Transcript of David Duff, attached to PSOF at Exh. EE ("Duff Dep., PSOF  
 24 Exh. EE"), at 17:4-10.)

25 **PSOF 122 RESPONSE:** Because the Two Remaining Claims are limited to and  
 26 require proof that the amendment of the Signal Retirement Plan violated ERISA §  
 27 204(g) in one of two precisely defined ways, (*see* DSAF ¶ 65), Defendants object and  
 28 move to strike paragraph 122 pursuant to LRCiv 7.2(m) and 56.1(a) as failing to set forth

1 a “material fact” that is relevant to resolution of the Two Remaining Claims. (*See also*  
 2 Fed. R. Civ. P. 56; Fed. R. Evid. 402.) Any claim by Plaintiffs relating to an alleged  
 3 failure by the plan administrator to timely respond to requests for documents has been  
 4 settled and released. *See, e.g., Allen*, 382 F. Supp. 2d at 1167-69 (ruling on whether  
 5 Plaintiffs had stated a valid claim for relief on such a claim); *see also* DSAF ¶¶ 59-70;  
 6 PSA Motion at Sections II & III.)

7 Subject to and without waiving Defendants’ objection, to the extent the Court  
 8 does not strike paragraph 122, it is undisputed.

9  
 10 **II. Defendants’ Statement Of Additional Facts Precluding Judgment For**  
**Plaintiffs**

11 1. When tax-qualified defined benefit plans merge, the common practice is to  
 12 describe when one plan ceases to have a separate existence and when the survivor plan  
 13 commences to cover the former participants in the combined plan. (June 21, 2010  
 14 Supplemental Declaration of Pam Baker, attached to DSOF at Tab 21 (“Baker Supp.  
 15 Decl.”), at 3.)

16 2. No plan participant may be simultaneously covered in both the merging  
 17 plan and the surviving plan, as it would lead to ambiguities as to which plan’s terms  
 18 apply to the affected participants. (Baker Suppl. Decl., DSOF Tab 21, at 4.)

19 3. It is common practice for the plan being merged out of existence to  
 20 describe the merger as occurring on a date (e.g., December 31), which is the last day of  
 21 the independent existence of that plan, and for the survivor plan to describe the merger  
 22 as taking effect the next day (e.g., January 1), which is the first day the survivor plan is  
 23 made effective to cover both groups of employees. (Baker Suppl. Decl., DSOF Tab 21,  
 24 at 5.)

25 4. The merger dates described in the Garrett Plan and the Signal Plan  
 26 (December 31, 1983 and January 1, 1984, respectively) are consistent with the practice  
 27 described above. (Baker Suppl. Decl., DSOF Tab 21, at 5.)  
 28



1           5.       Plaintiffs' expert agreed that, to the extent the Signal Plan amendments  
2 were formally adopted after the effective date of the Retirement Equity Act, those  
3 amendments "would have to protect" early retirement benefits and optional forms of  
4 benefits. (Holland Dep., attached hereto at Tab 101, at 203:16-205:4.)

5           6.       Section 4.10(c)(iii) of the Signal Plan provided that "the 'Accrued Benefit'  
6 as of December 31, 1983 of any Employee or Former Employee who was a participant in  
7 the Equity Plan prior to January 1, 1984 shall not be less than the amount of such  
8 'Accrued Benefit' as of December 31, 1983 determined under the terms of the Equity  
9 Plan." (Signal Retirement Plan, DSOF Tab 19, at HW0000352.)

10          7.       The Allied-Signal Retirement Program, amended and restated as of  
11 January 1, 1993, provided that "in no event shall a monthly normal retirement benefit  
12 determined under . . . section 5.1 be less than . . . the Member's Accrued Benefit  
13 determined as of December 31, 1992." (Doc. 16, Ex. Q, attached hereto at Tab 78, at  
14 HW0000683, § 5.1(f)(2).)

15          8.       Defendants challenged Plaintiffs' "hypothetical termination" cutback  
16 theory at the deposition of each of Plaintiffs' expert witnesses. (*See, e.g.*, Jun. 2008  
17 Poulin Dep., attached hereto at Tab 86, at 161:12-171:1; Holland Dep., attached hereto at  
18 Tab 101, at 181:1-184:18; Altman Dep., attached hereto at Tab 102, at 194:11-199:25.)

19          9.       Defendants' experts disputed and did not adopt Plaintiffs' "hypothetical  
20 termination" analysis. (*See, e.g.*, Sher Decl., DSOF Tab 1, at ¶ 31; Jul. 2010 Denlinger  
21 Decl., DSOF Tab 8, at ¶¶ 8, 10.)

22          10.       By December 1983 at the latest, the core features of what would become  
23 the amended and restated Signal Retirement Plan were known. (Apr. 28 2010 Coffey  
24 Dep., attached hereto at Tab 88, at 53:9-12; 63:6-16.)

25          11.       The core plan features, including the formulas for calculating benefits,  
26 were communicated to the plan actuaries and administrators, and were reinforced  
27 through "various meetings, memorandums, administration forms and factors[.]" (Apr.  
28 28 2010 Coffey Dep., attached hereto at Tab 88, at 52:24-53:8; 55:19-56:2; 85:20-86:5.)

1           12. The Social Security Offset was set forth in a January 1984 brochure, which  
2 included multiple references to, and sample calculations based on, a benefit formula that  
3 accounted for Social Security by deducting that amount from the final retirement benefit.  
4 (*See* DSOF ¶¶ 109-110.)

5           13. The SBA Offset was communicated to plan administrators by at least  
6 January 1984, and was specifically explained as using a split 3.5%/7.5% projection  
7 forward interest rate under the terms of the Signal Retirement Plan effective January 1,  
8 1984. (McLeod Dep., attached hereto at Tab 93, at 135:10-137:16; Hon. Ex. 684,  
9 attached hereto at Tab 83, at HW0038262, ¶ 15.)

10           14. James McLeod of Garrett Industrial Relations confirmed that Mr. Coffey's  
11 January 1984 memo (Hon. Ex. 684, *see* DSAF ¶ 13) served the "purpose of aiding [plan  
12 administrators] in having a uniform basis for calculating benefits" under the Signal  
13 Retirement Plan effective January 1, 1984. (McLeod Dep., attached hereto at Tab 93, at  
14 135:18-140:10.)

15           15. Tom Donovan also confirmed that Signal benefits administrators received  
16 a draft of the amended and restated Signal Plan document in early 1984. (Donovan  
17 Dep., attached hereto at Tab 87, at 262:4-263:12.)

18           16. In early 1984, Mr. Donovan answered employees' questions about their  
19 benefits under the amended and restated Signal Plan by referring to those plan drafts.  
20 (Donovan Dep., attached hereto at Tab 87, at 264:9-13.)

21           17. Mr. Donovan received a copy of the final amended and restated Signal  
22 Plan document in the second half of 1984. (Donovan Dep., attached hereto at Tab 87, at  
23 263:18-21.)

24           18. There were not any instructions or information that Mr. Donovan gave  
25 employees based on the draft plan documents that he later found out were "wrong" under  
26 the final plan documents. (Donovan Dep., attached hereto at Tab 87, at 265:4-8.)  
27  
28

1           19. The amended and restated plan terms of the Signal Retirement Plan also  
2 went into effect on January 1, 1984. (Apr. 28 2010 Coffey Dep., attached hereto at Tab  
3 88, at 54:11-15.)

4           20. Any plan participant who retired after January 1, 1984 was “treated as if  
5 that plan was already adopted and in effect.” (Covert Dep., attached hereto at Tab 94, at  
6 17:7-19:17; *see also* April 29, 2010 Deposition of William Coffey, attached hereto at  
7 Tab 89, at 241:8-12.)

8           21. For example, when Lyle Six retired in January 1984, his SBA offset was  
9 calculated at a rate “nearly double” that of the 3.5% rate used under the Garrett Plan.  
10 (Donovan Dep., attached hereto at Tab 87, at 176:6-181:22; Hon. Ex. 532, attached  
11 hereto at Tab 81, at HW0039789.)

12           22. In June 1984, in response to questions Mr. Six raised about his benefit  
13 calculations, a Garrett benefits administrator explained that “the answer to your  
14 questions is found in the terms of the Signal Retirement Plan,” and referred Mr. Six to  
15 that plan’s provision, set forth in section 4.2(e)(i), that the “New Portion” (i.e., the post-  
16 surplus allocation portion) of a participant’s SBA “is increased by compound interest at  
17 a 7.5% annual rate.” (Hon. Ex. 532, attached hereto at Tab 81, at 0039792-793.)

18           23. The Garrett-specific plan terms received “special attention” as the new  
19 plan was formally papered. (Apr. 28 2010 Coffey Dep., attached hereto at Tab 88, at  
20 52:24-53:8; 86:11-19 (explaining that, because “Garrett was the largest subsidiary in the  
21 organization” and because Garrett “had plan features that were relatively unique,” that  
22 “special attention was paid to be sure that their benefits were improved following the  
23 merger.”).)

24           24. There was no change to the Signal Plan’s terms governing the calculation  
25 of benefits from January 1, 1984 through the February 5, 1985 execution of the plan  
26 document. (Apr. 28 2010 Coffey Dep., attached hereto at Tab 88, at 53:23-54:1; 86:6-  
27 10.)

1           25. Simultaneously with the changes to the offset calculation formulas, the  
2 benefit enhancements under the amended and restated Signal Retirement Plan were also  
3 effective as of January 1, 1984. (*See* DSOF ¶ 64; *see also* May 1984 SPD, attached  
4 hereto at Tab 73, at HW0000431 (“summariz[ing] the Retirement Plan’s main features”  
5 for all former Garrett Plan participants who “automatically began participating in this  
6 [Signal] Plan on January 1, 1984.”).)

7           26. The benefit enhancement features referred to in the May 1984 brochure  
8 included the benefit improvements in, for example, (a) the definition of “final average  
9 compensation”; (b) the early retirement reduction factors; and (c) the 1% minimum  
10 benefits formula. (May 1984 SPD, attached hereto at Tab 73, at HW0000434 &  
11 HW0000436.)

12           27. The only Signal Plan that Plaintiffs’ expert relied on to calculate damages  
13 was “[t]he Signal Companies, Inc. Retirement Plan dated February 4, 1984, which . . .  
14 Defendants . . . now . . . believe to have been executed on or about February 4, 1985  
15 (‘Signal Plan’)[.]” (Jun. 2010 Poulin Decl., attached at Tab 6 to the DSOF, at ¶ 6(c); *see*  
16 *also* Jun. 2010 Poulin Dep., attached hereto at Tab 98, at 386:8-387:24.)

17           28. The 1976 Signal Plan could only be “wholly or partially amended or  
18 otherwise modified, including retroactive amendments to meet governmental  
19 requirements, from time to time by the Board of Directors.” (Sept. 2010 Kroll Decl.,  
20 PSOF Exh. T, at Exh. 2 at HW0025348, ¶ 6.6.)

21           29. The Signal Plan effective January 1, 1984 provided in relevant part that it  
22 could only be “wholly or partially amended or otherwise modified, including retroactive  
23 amendments to meet governmental requirements, from time to time by the Board of  
24 Directors[.]” (Signal Retirement Plan, attached hereto at Tab 71, at HW0000373, § 8.6.)

25 ///

26 ///

27 ///

28 ///

**III. Defendants' Arguments In Support Of Their Request To Strike Certain Of Plaintiffs' Submissions Pursuant To LRCiv 7.2(m)(2)**

**Mr. Holland's Untimely and Improper "Supplemental Report"**

30. Pursuant to LRCiv 7.2(m)(2), Defendants move to strike Mr. Holland's purported Second Supplemental Report as untimely and improper. Plaintiffs' summary judgment positions that rely on that "report" should be disregarded. (*See, e.g.*, Doc. 678 at 3-4, 6; Doc. 679 at ¶¶ 16, 25, 44, 48, 56 & 60.)

31. An expert witness must timely submit a report containing "a complete statement of all opinions the witness will express and the basis and reasons for them." (Fed. R. Civ. P. 26(a)(2)(B)(i).)

32. The Court's Seventh Revised Scheduling Order specifically instructed the parties that any expert disclosures had to be made on a timely basis consistent with the Federal Rules. (Doc. 484 at ¶ E.)

33. The Court's Seventh Revised Scheduling Order also provided all expert discovery had to be completed within 111 days of the close of fact discovery. (Doc. 484 at ¶ F.)

34. The Court subsequently ordered Plaintiffs to submit all rebuttal expert reports on July 23, 2010. (Doc. 656.)

35. The Court also ordered that, with one limited exception not applicable to Mr. Holland, expert discovery closed on August 4, 2010. (Docs. 656, 666.)

36. On July 23, 2010, Mr. Holland submitted an expert report on behalf of Plaintiffs. (*See* Doc. 677 (Defendants' Statement of Facts in Support of Their Motion for Summary Judgment on All Remaining Claims ("DSOF")), at Tab 14.) Defendants took his deposition on August 3, 2010. (*See id.* at Tab 15.)

37. On the evening of Friday, September 17, 2010—one business day before summary judgment motions were due—Plaintiffs forwarded a new, unsigned report from Mr. Holland that was labeled a supplemental report. (*See* Doc. 679-2 at Ex. C.)

1           38. Mr. Holland's "supplemental report" does not rebut the opinions expressed  
2 by either of Defendants' experts. Instead, Mr. Holland's "supplement" states that he was  
3 asked to "review and compare the accrued benefits under the Signal Plan as amended in  
4 February 1985 taking into account service through January 1, 1985." (Doc. 679-2 at Ex.  
5 C, at ¶ 2.)

6           39. No expert in this case has previously submitted any analysis based on Mr.  
7 Holland's newly-tendered January 1, 1985 date.

8           40. In the unsigned report, Mr. Holland referred to several actuarial  
9 calculations he claims to have performed in support of this analysis. (*See, e.g.*, Doc.  
10 679-2 at Ex. C, at ¶¶ 3-4.)

11           41. Neither Plaintiffs nor Mr. Holland have ever provided those calculation  
12 spreadsheets to Defendants.

13           42. Mr. Holland explains that to perform this new comparison, he "utilized the  
14 exhibits to the report of Defendants' actuary Lawrence Sher," as well as files from the  
15 Data Stipulation that Defendants provided to Plaintiffs in 2008. (*See* Doc. 679-2 at Ex.  
16 C, at ¶ 3.)

17           43. Those materials were available to Mr. Holland well in advance of the July  
18 23, 2010 deadline for his rebuttal report. (*See* July 2, 2010 Declaration of Lawrence  
19 Sher, attached at Tab 1 to the DSOF; *see also* June 16, 2008 Declaration of Claude  
20 Poulin, attached at Tab 30 to the DSOF, at ¶ 16 (referencing the Data Stipulation and his  
21 use of those materials to perform his "calculations and analysis" on behalf of Plaintiffs).)

22           44. Mr. Holland also states that he was asked to "review the early retirement  
23 reduction factors for participants who terminate employment before age 55." (Doc. 679-  
24 2 at Ex. C, at ¶ 5.)

25           45. Even if early retirement reduction factors remained at issue in this case,  
26 which they do not, (*see* DSAF ¶¶ 59-70, 83-87, PSA Motion at III.C.), Mr. Holland  
27 states that he relied on Exhibit B to the Garrett Retirement Plan to identify those factors.  
28 (*See id.*)



1           46. Exhibit B to the Garrett Retirement Plan was available to Mr. Holland well  
2 before the July 23, 2010 deadline for his rebuttal expert report. (*See, e.g.*, Doc. 679 at ¶  
3 114 (Plaintiffs stating that they received a copy of Exhibit B in June 2003).)

4           47. Finally, Mr. Holland states that he was “asked to determine if participants  
5 who terminated employment after July 1, 2000 would have received a benefit greater  
6 than the benefit determined using an amendment applied to participants who retired on  
7 and after July 1, 2000[.]” (Doc. 679-2 at Ex. C, at ¶ 6.)

8           48. To perform this calculation, Mr. Holland states that he relied on a  
9 spreadsheet that was part of Mr. Sher’s July 2, 2010 declaration. (Doc. 679-2 at Ex. C,  
10 at ¶ 6.)

11           49. Again, Mr. Sher’s July 2, 2010 declaration was available to Mr. Holland  
12 well in advance of the July 23, 2010 deadline for his rebuttal report.

13           50. An expert must supplement his opinions, but may do so after court-  
14 imposed deadlines only where the supplemental opinion contains new information that  
15 was not known by the expert at the time of his original report. (*See* Fed. R. Civ. P.  
16 26(e); *Toomey v. Nextel Comms., Inc.*, 2004 WL 5512967, at \*4-5 (N.D. Cal. Sept. 23,  
17 2004) (explaining that the supplementation requirement is not intended to “permit parties  
18 to add new opinions to an expert report based on evidence that was available to them at  
19 the time the initial expert report was due.”).)

20           51. If a party fails to comply with these rules, that party is “not allowed to use  
21 that information or witness,” *unless* the failure was “substantially justified” or  
22 “harmless.” (Fed. R. Civ. P. 37(c)(1).)

23           52. Thus, a “supplemental report” will be deemed untimely and excluded  
24 pursuant to the Federal Rules if it attempts to permit new expert testimony without  
25 permission or justification. (*See, e.g. Evanston Ins. Co. v. Hearthstone of Sun City LLC*,  
26 2010 WL 396366 at \* 2 (D. Ariz. Jan. 29, 2010) (striking untimely attempt to add a  
27 rebuttal expert); *Benjamin v. Coker*, 2008 WL 2163911 at \*2 (D. Ariz. May 22, 2008)  
28 (striking untimely expert report and refusing to consider it in deciding summary

judgment motion); *see also Wong v. Regents of the Univ. of Cal.*, 410 F.3d 1052, 1058-60 (9th Cir. 2005) (holding that lower court did not abuse its discretion when it excluded, in connection with a summary judgment motion, untimely disclosed expert opinions and related evidence).)

#### **Plaintiffs' Violation of the Partial Settlement Agreement ("PSA")**

53. Defendants are separately moving to enforce the PSA in view of Plaintiffs' repeated violations of that agreement through their assertion of released claims that they have improperly revived, *inter alia*, in their motion for summary judgment. Under LRCiv 7.2(m)(2), the Court should strike barred arguments and evidence Plaintiffs purport to assert on summary judgment, as specifically detailed below.

54. Plaintiffs commenced this class action lawsuit on March 1, 2004, filing a 25 page, 91 paragraph Complaint. (Doc. 1.)

55. Plaintiffs then filed a 28 page, 102 paragraph Amended Complaint asserting additional claims against Defendants. (Doc. 47.)

56. In the Amended Complaint, Plaintiffs asserted multiple claims against Defendants for purported violations of ERISA and the terms of the Garrett Retirement and Severance Plans (and the applicable successor plans). (Doc. 47 at ¶¶ 73-102 (setting forth five counts that allege violations of, for example, ERISA's vesting, nonforfeitability, and accruing provisions and disclosure requirements, and various plan terms).)

57. On July 19, 2005, the Court granted partial summary judgment for Plaintiffs on some of their claims, and dismissed with prejudice many others. (*Allen v. Honeywell Retirement Earnings Plan*, 382 F. Supp. 2d 1139, 1172-73 (D. Ariz. 2005).)

58. The dismissed claims included, for example, Plaintiffs' claims that Defendants "violated the terms of the Signal Retirement Plan . . . by failing to apply a 3.5% projection rate to Garrett participants eligible to commence benefits as of December 31, 1983," and that Defendants failed to "adequately disclose certain

information in their SPDs.” (*Allen v. Honeywell Retirement Earnings Plan*, 382 F. Supp. 2d 1139, 1172-73 (D. Ariz. 2005).)

59. After subsequent discovery and extensive negotiations and mediation sessions, the parties agreed to the PSA in October 2007. (*See* Doc. 312-2.)

60. As part of the PSA, Plaintiffs released:

*any and all actions, causes of action, claims, demands, liability, obligations, promises, rights and suits whatsoever, . . . whether known or unknown, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, that were asserted or could have been asserted . . . that arise out of or relate to the Garrett Retirement Plan, the Signal Retirement Plan, the Allied Signal Retirement Program, the Retirement Plan, the Garrett Severance Plan, the Garrett Secured Benefit Account and/or the Secured Benefit Plan* (said plans as amended and in effect from time to time up through and including October 1, 2007, without regard to any amendment adopted thereafter), *with the sole exception of the Three Remaining Claims*. (Doc. 312-2 at § 4.01 (emphasis added).)

61. The parties reserved their right to prosecute and defend the remaining claims “in any manner they see fit; provided, however . . . that the maximum amount of Subsequent Recovery . . . shall not exceed” \$500 million,” (Doc. 312-2 at § 2.10), and Plaintiffs specifically covenanted not to prosecute, assert or maintain a released claim in any action or proceeding, including the instant litigation. (*Id.* at § 4.02.)

62. In return, Defendants paid Plaintiffs in excess of \$35 million, and agreed to stop charging administrative fees to the Secured Benefit Accounts. (Doc. 312-2 at §§ 3.03(b), 3.09.)

63. The Three Remaining Claims under the PSA were defined as the SBA Offset Claim, the Social Security Offset Claim and the Minimum Benefits Claim. (Doc. 312-2 at 18.)

64. Since the PSA, the Court has entered summary judgment in Defendants’ favor on the Minimum Benefits Claim. (Doc. 555.)

65. As a result, only two claims remain in this case. Those Two Remaining Claims are defined as follows:

1       **“SBA Offset Claim”** means the claims, purported to be brought under  
 2       ERISA §§ 502(a)(1)(B) and 502(a)(3), that Defendants violated ERISA  
 3       § 204(g) by increasing from 3.5% to 7.5% the interest rate used to project  
 4       forward a portion of Secured Benefit Account balances from termination  
 of employment to age 65 for purposes of calculating the SBA Offset  
 following the merger of the Garrett Retirement Plan into the Signal  
 Retirement Plan. (Doc. 312-2 at 15-16.)

5       **“Social Security Offset Claim”** means the claims, purported to be  
 6       brought under ERISA §§ 502(a)(1)(B) and 502(a)(3), that Defendants  
 7       violated ERISA § 204(g) by applying the Social Security offset formula  
 contained in Section 4.2(b) of the Signal Retirement Plan to service  
 credited before January 1, 1984. (*Id.*)

8       66. The PSA further defined the “Garrett Retirement Plan” as “The Garrett  
 9       Corporation Retirement Plan for Employees of The Garrett Corporation and Its  
 10       Participating Subsidiary Companies in effect on December 31, 1983” and the “Signal  
 11       Retirement Plan” as “The Signal Companies, Inc. Retirement Plan, as amended and  
 12       restated effective January 1, 1984 with amendments adopted or effective before January  
 13       1, 1993.” (Doc. 312-2 at 9, 16.)

14       67. The PSA provides that the Court may enforce it through “specific  
 15       performance and/or compensatory damages and/or such other legal and/or equitable  
 16       relief for the breach as may be available under applicable law.” (Doc. 312-2 at § 5.11.)

17       68. The Court approved the PSA on February 8, 2008, dismissing with  
 18       prejudice all claims asserted in the litigation (except the now two narrowly-defined  
 19       remaining claims), and releasing all “Released Claims” as set forth in the PSA. (Doc.  
 20       402 at ¶¶ 8, 11 & 13.)

21       69. The Court’s Order permanently bars and enjoins Plaintiffs from  
 22       prosecuting “any such Released Claim against any Released Party.” (Doc. 402 at ¶ 11.)

23       70. The Court also maintained jurisdiction to interpret and enforce the PSA.  
 24       (Doc. 402 at ¶ 20.)

25       71. Class action settlements are favored, *see, e.g., In re Syncor ERISA Litig.*,  
 26       516 F.3d 1095, 1101 (9th Cir. 2008), and Courts enforce those agreements by giving the  
 27       terms of broad releases their plain and ordinary meaning. *See, e.g., Howard v. Am.*  
 28       *Online Inc.*, 208 F.3d 741, 747 (9th Cir. 2000) (holding that, where settlement barred

1 claims that “arise out of or are related to the matters referred to” in the complaint,  
2 plaintiffs could not “repackage the claims asserted and settled” in a subsequent  
3 litigation).

4 72. A court’s approval of a PSA constitutes a final judgment on the merits of  
5 the underlying claims. *See, e.g., Reyn’s Pasta Bella, LLC. v. VISA USA, Inc.*, 442 F.3d  
6 741, 746 (9th Cir. 2006).

7 73. A class PSA bars not just the claims alleged in the complaint, but also any  
8 claims arising out of or related to the factual predicate alleged in the complaint. *See,*  
9 *e.g., Reyn’s Pasta*, 422 F.3d at 748-49 (barring claims that “arise from an identical  
10 factual predicate” as the released claims); *Howard*, 208 F.3d 741 at 747 (same).

11 74. Likewise, a plaintiff is barred from seeking any form of relief that was  
12 released under a PSA agreement. *See, e.g., Mayfield v. United States*, 599 F.3d 964, 968  
13 & 972 (9th Cir. 2010) (dismissing case where only form of relief plaintiff sought had  
14 been previously “bargained away”).

15 75. Plaintiffs have violated the terms of the PSA and this Court’s February 8,  
16 2008 Order by, *inter alia*, asserting Released Claims in their Motion for Summary  
17 Judgment. (*See* Doc. 678.)

18 76. In moving for summary judgment on the Social Security Offset Claim,  
19 Plaintiffs claim that class members “experienced an immediate reduction in their accrued  
20 benefits under the 1976 Plan’s SSI offset formula.” (Doc. 678 at 5.)

21 77. The PSA limits the Social Security Offset Claim to a cutback caused by  
22 the Social Security formula set forth in the Signal Plan that was effective January 1,  
23 1984, which is, by definition, not the 1976 Signal Plan. (*See* Doc. 312-2 at 16; *see also*  
24 DSAF ¶ 65.)

25 78. Because any claim for a reduction in benefits under the 1976 Signal Plan is  
26 not one of the two remaining claims, it is expressly released and barred by the PSA.  
27 (Doc. 312-2 at §§ 4.01-02.)  
28

1           79. The Court should enforce the PSA by excluding Plaintiffs' evidence and  
2 argument regarding the 1976 Signal Retirement Plan. (*See, e.g.*, Doc. 678 at 5; Doc. 679  
3 at ¶¶ 18, 21-26.)

4           80. Plaintiffs also now claim that "from 1993 forward there was absolutely no  
5 plan provision protecting employees' accrued benefits as of 12/31/83 under the Garrett  
6 Plan." (Doc. 678 at 14.)

7           81. Plaintiffs' assertion regarding the 1993 Signal Plan is beyond the scope of  
8 the narrowly defined remaining claims. (DSAF ¶ 65.)

9           82. The Court should enforce the PSA by excluding Plaintiffs' evidence and  
10 argument regarding the 1993 Signal Plan. (*See, e.g.*, Doc. 678 at 14.)

11           83. Plaintiffs claim that the Signal Plan failed to protect early retirement  
12 benefits, early commencement factors and actuarial conversion actors used to calculate  
13 benefits. (Doc. 678 at 10-13.)

14           84. The remaining claims pertain only to Normal Retirement Benefits, which  
15 are calculated under Section 4.2 of the Signal Plan: the SBA Offset Claim pertains to  
16 the projected interest rate in Section 4.2(e), and the Social Security Offset Claim pertains  
17 to the benefit formula "contained in Section 4.2(b)." (*See* DSAF ¶ 65; *see also* Doc. 16,  
18 Ex. E at § 4.2.)

19           85. Early retirement factors are set forth in section **4.4** of the Signal Plan, a  
20 separate section that addresses Early Retirement Benefits. (Doc. 16, Ex. E at § 4.4.)

21           86. Plaintiffs' claims for early retirement benefits and early commencement  
22 and actuarial conversion factors are not encompassed in the two remaining claims. (*See*  
23 DSAF ¶ 65.)

24           87. The Court should enforce the PSA by excluding Plaintiffs' evidence and  
25 argument regarding early retirement benefits. (*See, e.g.*, Doc. 678 at 4, 6, 10-15; Doc.  
26 679 at ¶¶ 16, 33, 35, 48, 85.)

27           88. Plaintiffs further claim that the May 1984 SPD was the governing plan  
28 document until the Signal Plan was formally executed on February 4, 1985, and that the



1 May 1984 SPD was deficient because it did not expressly disclose the interest rate used  
2 to project the SBA offset or the “wear away” impact caused by the SBA Offset changes.  
3 (Doc. 678 at 6, 16 & 23.)

4 89. In Count V of the Amended Complaint, Plaintiffs alleged that Defendants  
5 violated ERISA because certain SPDs allegedly failed to disclose, or were misleading  
6 about, the changes to the SBA offset rate. (See Doc. 47 at ¶ 101.)

7 90. Plaintiffs further alleged:

8 Pursuant to §§ 502(a)(1)(B) and (a)(3) of ERISA, Plaintiffs and Class  
9 Members are entitled to declaratory, injunctive and equitable relief, *inter*  
10 *alia*, declaring that Defendants violated the disclosure provisions of  
11 ERISA and enjoining Defendants from applying changes to the SBA  
12 Offset provisions of the Garrett Retirement Plan . . . that were not  
disclosed in the summary plan descriptions and granting Plaintiffs other  
relief including, *inter alia*, all benefits due under the terms of the Plans . . .  
(Doc. 47 at ¶ 102.)

13 91. In their opposition to Defendants’ Motion to Dismiss, Plaintiffs argued that  
14 the SPDs were deficient because they allegedly (i) failed to disclose the interest rates  
15 used to calculate the SBA offset; and (ii) included misleading statements regarding that  
16 offset. (Doc. 68 at 4, 7-9).

17 92. Plaintiffs further asserted that the claim in Count V arose under ERISA  
18 § 502(a)(1)(B) as a claim for benefits under the terms of the plan “because *the SPD is*  
19 *the Plan*, if with respect to disclosure of the offset, it is the more favorable of the two  
20 documents.” (Doc. 68 at 14) (emphasis added).)

21 93. The Court disagreed with Plaintiffs, and specifically held that their  
22 “argument has no merit. No case has ever held that a mere failure to include the specific  
23 methodology used to calculate a benefit is an ERISA violation. . . . An SPD is a  
24 summary, and is not required to answer every conceivable question that a participant  
25 may have.” (*Allen*, 382 F. Supp. 2d at 1170 (internal quotations and citation omitted).)

26 94. The Court dismissed Count V with prejudice, holding that the 1984 SPD  
27 satisfied ERISA’s disclosure requirements and was not misleading. (*Allen*, 382 F. Supp.  
28 2d at 1169-73.)



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## **CERTIFICATE OF SERVICE**

I do certify that on November 5<sup>th</sup>, 2010, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

/s/ Kelly Dourlein